

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 19, 2021

VIA ELECTRONIC TRANSMISSION

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services

Dear Secretary Mayorkas and Acting Secretary Cochran:

During the presidential transition, then-President elect Biden made it clear that once in office, he would immediately begin rolling back immigration policies put in place to curtail illegal immigration, ensure careful vetting of asylum applicants, and protect U.S. national security interests. In keeping with this agenda, since January 20, President Biden and the Department of Homeland Security (DHS) have been aggressively reversing previous policies and replacing them with lax border security and enforcement policies that encourage immigrants to illegally migrate to the United States. President Biden also lent his support to a sweeping immigration proposal that, if passed, would grant mass amnesty with no strings attached to millions of illegal immigrants in the United States. Worse, the White House-backed immigration proposal makes no effort whatsoever to secure the southern border. Whether or not the Biden Administration wants to admit it, these policies have created a crisis situation.¹

Not surprisingly, these changes have been taken by many in Central and South America as an open invitation to illegally cross the U.S.-Mexico border with an expectation that arriving in the near future could mean an easy path to U.S. citizenship. Smugglers have been recruiting increasingly large groups of as many as 1,000 or more people to bring across the border, encouraging them to make the trip on the basis that the Biden Administration is easier on illegal immigration than past administrations.²

The current crisis at the border was easily foreseeable given the policies advocated by President Biden as a political candidate. Even before the prior administration left office, in anticipation of the incoming Biden Administration, a surge in illegal immigration began to pick

¹ The White House, "Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas" (March 1, 2021), available at <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/>.

² Anna Giaritelli, "Smugglers push triple-digit groups of families and children across border threatening Biden agenda" *The Washington Examiner* (March 4, 2021), available at <https://www.washingtonexaminer.com/news/smugglers-triple-digit-groups-families-children-across-border>.

up the pace late last year, and it has escalated dramatically during the weeks since.³ This surge includes a large number of unaccompanied minors who are overwhelming an already burdened system.⁴ Press reports indicate that federal authorities have been actively setting up emergency centers to house migrants, including special centers for unaccompanied minors, and are updating policies to allow those apprehended crossing the border who are not subject to Title 42 to now be quickly released into the U.S. Secretary Mayorkas recently accompanied a team of officials on a trip to the border to assess what many now see as an escalating, but also self-induced, crisis.⁵ We write to ask for details about the extent of the surge in illegal immigration at the U.S.-Mexico border and the steps that DHS and HHS are taking to manage it.

The Extent of the Border Crisis

The numbers are staggering. According to U.S. Customs and Border Protection (CBP), nearly 78,000 people were detained or arrested at the U.S.-Mexico border in January 2021.⁶ That was the highest number recorded for the month of January at any point during the last decade, and those numbers have only continued to climb.⁷ CBP has now confirmed that it encountered over 100,000 migrants at the southern border in February.⁸ That's the highest number for the month of February since 2006.⁹ During the first week of March, there were several days when U.S. agents apprehended more than 4,000 migrants *per day*.¹⁰

There also has been a drastic increase in the number of border crossings by unaccompanied alien children (UAC). DHS personnel encountered more than 5,800 at the southwest land border in January.¹¹ That was about 90% higher than the number DHS personnel encountered at the southwest border during the same month last year.¹² As of the first week of March, unaccompanied minors were crossing the border at a rate of about 350 per day, or about four times the rate recorded in fall 2020.¹³ *Fox News* recently reported that, according to one senior Immigration and Customs

³ Miriam Jordan and Max Rivlin-Nadler, "Migrant Families Force Biden to Confront New Border Crisis" *The New York Times* (February 6, 2021), available at <https://www.nytimes.com/2021/02/06/us/migrants-border-coronavirus-san-diego.html>.

⁴ Stef W. Kight, "Scoop: Biden briefing calls for 20,000 child migrant beds" *Axios* (March 2, 2021), available at <https://www.axios.com/biden-immigration-child-migrant-border-aeaf0231-02d3-4c96-b139-68069c0c1189.html>.

⁵ Sandra Sanchez, "Homeland Security Secretary Mayorkas visited South Texas migrant tent city, child detention facilities" *KGET* (March 7, 2021), available at <https://www.kget.com/border-report-tour/homeland-security-secretary-mayorkas-visited-south-texas-migrant-tent-city-child-detention-facilities/>.

⁶ Nick Miroff, "Border arrests rose in January, in latest sign of migration wave that could test Biden" *The Washington Post* (February 10, 2021), available at https://www.washingtonpost.com/immigration/border-arrests-increased-in-january/2021/02/10/8604f714-6bc0-11eb-9f80-3d7646ce1bc0_story.html.

⁷ *Id.*

⁸ U.S. Customs and Border Protection, "CBP Announces February 2021 Operational Update (March 10, 2021), available at <https://www.cbp.gov/newsroom/national-media-release/cbp-announces-february-2021-operational-update>.

⁹ Frank Jack Daniel and Ted Hesson, "U.S. detained nearly 100,000 migrants at Mexico border in February, sources say" *Reuters* (March 5, 2021), available at <https://www.reuters.com/article/us-usa-immigration-border/u-s-detained-nearly-100000-migrants-at-mexico-border-in-february-sources-say-idUSKCN2AX2FE>.

¹⁰ Nick Miroff, "Biden administration rushes to accommodate border surge, with few signs of plans to contain it: The White House is treating the fast-growing influx mostly as a logistical challenge" *The Washington Post* (March 6, 2021), available at https://www.washingtonpost.com/national/border-surge-biden-crisis/2021/03/05/d0933282-7db8-11eb-b0fc-83144c02d676_story.html.

¹¹ U.S. Customs and Border Protection, "Southwest Land Border Encounters" (modified March 10, 2021), available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

¹² *Id.*

¹³ Nick Miroff, "Biden administration rushes to accommodate border surge, with few signs of plans to contain it: The White House is treating the fast-growing influx mostly as a logistical challenge" *The Washington Post* (March 6, 2021), available at

Enforcement (ICE) official, “[t]he number of unaccompanied minors and families arriving at the U.S.-Mexico border this year ‘are expected to be the highest numbers observed in over 20 years.’”¹⁴

The dramatic rise in border crossings has significantly strained existing resources. CBP recently set up a tent city in South Texas to house the growing number of illegal immigrants in custody, and it is now considering plans to open additional facilities in Yuma and Tucson, Arizona.¹⁵ The Biden Administration is using this influx to justify the implementation of “catch and release” policies, where officials quickly release migrants into the United States rather than holding them in custody. Consistent with this approach, the administration is now reportedly considering a plan to rename emergency facilities “reception centers.”¹⁶ According to one official, the goal is to release people “as fast as possible,” at times even directly from Border Patrol stations and, if an area “gets overcrowded,” the instructions to ICE are to “bus them further into the interior of the United States.”¹⁷ These sorts of policies are totally unacceptable.

Catch-and-release policies pose additional risks to public health in the midst of the ongoing COVID-19 pandemic. The Biden Administration has expressed a purported commitment to ending the pandemic; however, news reports suggest that it now plans to keep some who are apprehended by DHS personnel in custody for just 72 hours before releasing them into American communities.¹⁸ Furthermore, according to reports, in the event that processing centers become filled to capacity, there are plans to allow some detainees to complete their 72 hour wait in designated hotels in American cities such as McAllen and El Paso, Texas, and Phoenix, Arizona.¹⁹

Given the estimated two to fourteen day incubation period for COVID-19, it is unclear how DHS is able to establish after just zero to three days whether or not individuals who have recently crossed the border, some with recent and extensive exposure to large groups of people under harsh conditions, pose a risk of spreading the virus. Indeed, it appears that DHS may be offering no such assurances. According to reports, ICE agents have knowingly released multiple asylum seekers into the U.S. after they have tested positive for COVID-19.²⁰

https://www.washingtonpost.com/national/border-surge-biden-crisis/2021/03/05/d0933282-7db8-11eb-b0fc-83144c02d676_story.html.

¹⁴ Danielle Wallace, “Biden administration converting Texas migrant centers to rapidly release detained families in 72 hours or less” *Fox News* (March 7, 2021), available at <https://www.foxnews.com/us/biden-administration-ice-texas-migrant-centers-rapidly-release-detained-families-72-hours>.

¹⁵ Emily Jacobs, “Biden administration opens another tent city to detain surge of illegal migrants” (February 11, 2021), available at <https://nypost.com/2021/02/11/biden-admini-opens-tent-city-to-detain-illegal-migrants/>; see also Adriana Loya, “New shelters for migrant children could be coming to Yuma and Tucson” *12 News* (March 16, 2021), available at <https://www.12news.com/article/news/local/arizona/new-shelters-for-migrant-children-could-be-coming-to-yuma-and-tucson/75-8e50720e-43b4-4655-9030-2c0430f20e49>.

¹⁶ Anna Giaritelli, “Exclusive – ‘Reception centers’: Biden eyes friendlier name for new migrant facilities” (March 5, 2021), available at <https://www.washingtonexaminer.com/news/exclusive-reception-centers-biden-eyes-friendlier-name-new-migrant-facilities>.

¹⁷ *Id.*

¹⁸ Danielle Wallace, “Biden administration converting Texas migrant centers to rapidly release detained families in 72 hours or less” (March 7, 2021), available at <https://www.foxnews.com/us/biden-administration-ice-texas-migrant-centers-rapidly-release-detained-families-72-hours>.

¹⁹ *Id.*

²⁰ Jon Gerberg and Maria Sacchetti, “A border community, ICE at odds over release of detainees with covid” *The Washington Post* (March 14, 2021), available at https://www.washingtonpost.com/immigration/immigration-covid-detainees/2021/03/14/674a4e50-846b-11eb-9ca6-54e187ee4939_story.html.

Unaccompanied Alien Children

Last month, the Biden Administration decided to exempt unaccompanied minors from Title 42 of the Public Health Safety Act, meaning that children under the age of eighteen who are apprehended crossing the border without a parent or legal guardian can no longer be legally expelled and must instead be sent to an HHS facility within 72 hours.²¹

That decision, of course, has offered a fresh incentive for families to send their children on the extremely dangerous journey to cross the border alone, and has contributed to the rapidly increasing number of UAC border crossings. An influx of unaccompanied alien children (UAC) is now imposing an increasingly heavy burden on existing HHS resources. A March 2 briefing for President Biden outlined a need for 20,000 additional beds to shelter an expected flood of child migrants.²² As the number of UAC in custody has outstripped capacity, the Biden Administration has been opening additional emergency centers in order to house them. For example, federal agencies have determined to use the Kay Bailey Hutchison Convention Center in Dallas for up to three months to house as many as 3,000 unaccompanied immigrant boys aged 15-17.²³ The surge of UAC now reaches Midland, Texas, where teenage boys are being moved “in buses overnight” to holding facilities.²⁴ The city of Midland was blindsided by the news. Midland Mayor Patrick Payton, who was not even consulted or notified in advance, described the sudden arrival of the migrants as “the strangest, most backward, disrespectful thing [he recalls seeing]... in a very long time.”²⁵ Additionally, the recently opened facility in Carrizo Springs, Texas that Secretary Mayorkas visited reportedly holds up to 700 children between ages 13 and 17.²⁶ According to reports, the cost to taxpayers of emergency facilities such as the one at Carrizo Springs is approximately \$775 a day per child.²⁷

As the Biden Administration continues to search for ad hoc solutions to the worsening crisis, it has sent conflicting signals about whether it will reopen a facility in Homestead, Florida that was closed by the Trump Administration.²⁸ HHS is also considering proposals to open facilities at NASA’s Moffett Federal Airfield in California and Fort Lee, a U.S. Army base in

²¹ Ted Hesson, “Exclusive: U.S. considering use of Virginia military base to house migrant children” *Reuters* (March 5, 2021), available at <https://www.reuters.com/article/us-usa-immigration-children-exclusive/exclusive-u-s-considering-use-of-virginia-military-base-to-house-migrant-children-idUSKBN2AX1TG>.

²² Stef W. Kight, “Scoop: Biden briefing calls for 20,000 child migrant beds” *Axios* (March 2, 2021), available at <https://www.axios.com/biden-immigration-child-migrant-border-aeaf0231-02d3-4c96-b139-68069c0c1189.html>.

²³ Everton Bailey Jr., “U.S. to House Up to 3,000 Immigrant Teens at Dallas Convention Center” *Dallas News* (March 15, 2021), available at <https://www.dallasnews.com/news/immigration/2021/03/15/us-to-house-up-to-3000-immigrant-teens-at-dallas-convention-center/>.

²⁴ Joshua Skinner, “Midland Leaders Blindsided by Arrival of Migrants at Holding Facility” *CBS 7* (March 14, 2021), available at <https://www.cbs7.com/2021/03/14/gov-abbott-federal-hhs-sending-some-migrants-to-midland/>.

²⁵ *Id.*

²⁶ Silvia Foster-Fraud, “First migrant facility for children opens under Biden” *The Washington Post* (February 22, 2021), available at https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117_story.html.

²⁷ *Id.*

²⁸ Alexi C. Cardona, “Report: Biden Backtracks, Says Homestead Migrant Camp Shouldn’t Reopen” *Miami New Times* (March 16, 2021), available at <https://www.miaminewtimes.com/news/axios-biden-opposes-reopening-homestead-camp-for-migrant-children-11982067>; see also Miriam Jordan, Simon Romero and Zolan Kanno-Youngs “Children Are Sleeping on Mats in Overcrowded Border Facilities” *The New York Times* (March 15, 2021), available at <https://www.nytimes.com/2021/03/15/us/border-migrant-children-texas.html>.

Virginia.²⁹ Such moves are unprecedented and likely to create novel and complex logistical challenges.

On March 11, the Biden Administration terminated an April 13, 2018, Memorandum of Agreement between the Department of Health and Human Services' Office of Refugee Resettlement (ORR), ICE, and CBP which ensured that potential UAC sponsors were carefully and thoroughly vetted for any potential criminal concerns before receiving a child from ORR.³⁰ As sponsor vetting requirements are relaxed and as placement services are fast-tracked to handle the growing influx of UAC, it is unclear how DHS and HHS will ensure that measures taken to expedite the process do not lower safeguards put in place to ensure the safety of minors.

Addressing the Border Crisis

When asked during a recent press conference whether there is a crisis at the U.S.-Mexico border, Secretary Mayorkas emphatically answered, “no.”³¹ He further stated, “I think there is a challenge at the border that we are managing, and we have our resources dedicated to managing it.”³² Unfortunately, it is clear that Secretary Mayorkas and the Biden Administration view the flood of illegal immigration resulting from their policies as a process to be managed rather than stopped.

It is therefore not surprising that despite the dramatic rise in illegal immigration, the Biden Administration has decided to aggressively press forward with plans to end the previous administration's “Remain in Mexico” policy. This process, which is already underway, involves bringing an estimated 25,000 *additional* asylum seekers from Mexico into the United States to await their court hearings, potentially years into the future.³³

Regardless of what the Biden Administration wants to call this current set of circumstances it has created, this surge in illegal immigration carries significant risks. It also imposes a heavy burden on public resources. Congress and the American people must have additional clarity about how DHS and HHS are addressing it.

²⁹ Miriam Jordan, Simon Romero and Zolan Kanno-Youngs, “Children Are Sleeping on Mats in Overcrowded Border Facilities” *The New York Times* (March 15, 2021), available at <https://www.nytimes.com/2021/03/15/us/border-migrant-children-texas.html>; Ted Hesson, “Exclusive: U.S. considering use of Virginia military base to house migrant children” *Reuters* (March 5, 2021), available at <https://www.reuters.com/article/us-usa-immigration-children-exclusive/exclusive-u-s-considering-use-of-virginia-military-base-to-house-migrant-children-idUSKBN2AX1TG>.

³⁰ “Memorandum of Agreement (MOA) Among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Matters Relating to Unaccompanied Children” (March 11, 2021), on file with Committee staff; *see also* “Memorandum of Agreement Among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters” (April 13, 2018), available at <https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf>.

³¹ The White House, “Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas” (March 1, 2021), available at <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/>.

³² *Id.*

³³ Elliot Spagat, “Biden to slowly allow 25,000 people seeking asylum into US” *AP News* (February 12, 2021), available at <https://apnews.com/article/biden-25000-asylum-seekers-782c8495f29d9d73f2ffc80d5b2a2aef>; Julian Resendiz, “8,600 asylum-seekers now registered to return to US from Mexico” *Fox 2 now* (February 26, 2021), available at <https://fox2now.com/news/border-report/8600-asylum-seekers-now-registered-to-return-to-us-from-mexico/>.

Accordingly, we ask that you answer the following questions no later than April 2, 2021.

1. How many migrants has CBP encountered at the U.S.-Mexico border since January 20, 2021? Please provide daily totals and a breakdown of those apprehended by age and nationality. Among this group:
 - a. How many have been classified as unaccompanied alien children?
 - b. How many have been exempted from Title 42?
 - c. How many have claimed asylum?
 - d. How many have been screened by U.S. Citizenship and Immigration Services for credible fear?
 - e. How many have been tested for COVID-19 in total?
 - f. Of the migrants who have been released into the interior of the United States, how many have been tested for COVID-19?
 - g. How many have received a COVID-19 vaccine?
 - h. How many have been apprehended as part of large groups of 100 or more people?
2. Among those who have been tested for COVID-19:
 - a. How long after entering DHS custody were they tested?
 - b. How long after testing negative must individuals wait before they are released into the U.S.?
 - c. Among those released into the U.S. after receiving a negative COVID-19 test, what follow-up does DHS do to ensure that they do not subsequently test positive?
 - d. How many have tested positive for COVID-19?
 - e. When an individual tests positive for COVID-19, what is the procedure DHS is following to ensure their health and safety and the health and safety of others?
 - f. How many of those who have tested positive for COVID-19 have required hospitalization?
 - g. How many have been identified as being part of clusters of other patients who have tested positive for COVID-19?
 - h. What steps is DHS taking to trace the movements of those who have tested positive and identify other possible cases during the period where they were likely to have been infectious?
3. Among those who have been apprehended as part of large groups of 100 or more people, how many have tested positive for COVID-19?
4. Please describe any current plans developed by DHS to safeguard American communities receiving migrants released from DHS custody from the spread of COVID-19.
5. Among those migrants listed as unaccompanied alien children:
 - a. How many have been held at CBP facilities for longer than 72 hours?

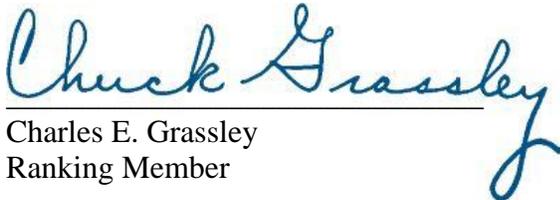
- b. How many are in HHS facilities where CDC guidelines to prevent the spread of COVID-19 have been relaxed?
6. Following the termination of the April 13, 2018, Memorandum of Agreement between ORR, ICE, and CBP, what steps are being taken to ensure that weaker vetting requirements don't endanger the safety of minors?
7. What is the medical basis for not subjecting unaccompanied alien children to the Title 42 prohibition on entry, while keeping the Title 42 entry prohibition in place against other categories of aliens?
8. Regarding aliens waiting in Mexico under the Migrant Protection Protocols and who are currently being released into the United States:
 - a. Are those aliens being paroled into the United States, and if so, may they apply for employment authorization?
 - b. Are those aliens being released with a Notice to Appear in immigration court, and if so, how far out is the furthest date for such appearance that has been included in such a Notice?
9. How many migrants does DHS currently project will cross the border this year? Of those, how many does DHS expect will be unaccompanied alien children? Please provide copies of all presentations or reports that have been prepared by DHS containing information related to the current and projected number of border crossings.
10. Please provide a complete list of the current DHS or HHS facilities used to house UAC. With your response, for each facility on the list, please include: 1) the current number of UAC and staff, as well as maximum occupancy levels allowed under COVID-19 restrictions; 2) a detailed description of what, if any, COVID-19 protocols were changed in order to make room for additional UAC; 3) a copy of the facility's operational plan to test for and prevent the spread of COVID-19; 4) a breakdown of monthly operating costs.
11. Please provide a list of facilities that DHS and HHS plan to open in the future in order to house migrants and UAC, including their intended operating capacities under normal conditions and under current COVID-19 restrictions. How many facilities do DHS and HHS currently plan to open, and how many do you project that they will need to open by the end of 2021?
12. Is DHS currently working to co-locate HHS personnel to U.S. Border Patrol stations?
13. Please describe any plans for HHS personnel to match unaccompanied children with sponsors while they are still held at DHS facilities.
14. On March 8, Secretary Mayorkas sent an email to the DHS workforce in which he stated that he had "activated the Volunteer Force to support Customs and Border

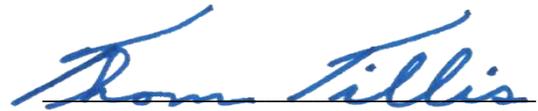
Protection (CBP) as they face a surge in migration along the Southwest Border.” The email also described the number of migrants showing at the southern border as “overwhelming.”

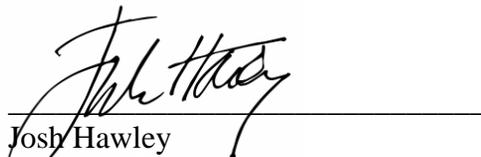
- a. From which agencies are these volunteers being pulled, and what analysis has been done regarding the additional strain that this action will put on those agencies?
- b. What is the level of exposure that this Volunteer Force will have to illegal immigrants who may have COVID-19?
- c. What specific role with this Volunteer Force be fulfilling, how long will they be deployed, and what is the additional cost that the taxpayer will bear as a result of this deployed force?

Thank you for your attention to this important matter. Should you have questions, please contact Daniel Parker or Drew Robinson of Ranking Member Grassley’s staff at 202-224-5225.

Sincerely,


Charles E. Grassley
Ranking Member


Thom Tillis
United States Senator


Josh Hawley
United States Senator


Ted Cruz
United States Senator


Marsha Blackburn
United States Senator


Mike Lee
United States Senator


Tom Cotton
United States Senator


John Kennedy
United States Senator