

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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February 29, 2024

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3017 7th St. S.W.
Washington, DC 20528

Dear Secretary Mayorkas:

The Committee continues to conduct oversight into the unprecedented illegal immigration crisis along the southwest border. Under the Biden Administration, more than 6.2 million illegal aliens have been allowed to enter our country, including 1.8 million known illegal alien “gotaways”¹ and 4.4 million illegal aliens released into the country by the Biden Administration.² According to press reports, “more than 800” known illegal alien “gotaways” escape into the interior of the U.S. every single day.³ As the crisis along the southwest border has worsened, the Biden Administration has continuously responded by rewarding illegal aliens with immigration relief and benefits, such as by creating new parole programs for countries whose nationals have surged the border,⁴ easing rules relating to employment authorization,⁵ and

¹ Casey Harper, *Border crisis creates national security threat for U.S., observers say*, WASH. EXAMINER (Aug. 7, 2023); Griff Jenkins (@GriffJenkins), X (Jan. 24, 2024, 9:11 AM).

² See H. Comm. on the Judiciary, Rep. on The Biden Border Crisis: How the Biden Admin. Opened the Sw. Border and Abandoned Interior Immigr. Enf’t at App’x 1 (Oct. 9, 2023); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2023*, U.S. DEP’T OF HOMELAND SEC. (last accessed Feb. 14, 2024); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2024*, U.S. DEP’T OF HOMELAND SEC. (last accessed Feb. 14, 2024); Camilo Montoya-Galvez, *Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting*, CBS NEWS (Jan. 22, 2024); Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (last accessed Feb. 8, 2024); U.S. Customs and Border Prot., *CBP Releases January 2024 Monthly Update*, U.S. DEP’T OF HOMELAND SEC. (Feb. 13, 2024).

³ Griff Jenkins (@GriffJenkins), X (Jan. 24, 2024, 9:11 AM), <https://x.com/GriffJenkins/status/1750159364818616410?s=20>.

⁴ U.S. Citizenship and Immigration Servs., *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, U.S. DEP’T OF HOMELAND SEC., <https://www.uscis.gov/CHNV> (last accessed Feb. 16, 2023).

⁵ U.S. Citizenship and Immigration Servs., *Employment Authorization Documents Based on Compelling Circumstances*, U.S. DEP’T OF HOMELAND SEC. (June 14, 2023), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230614-CompellingCircumstancesEAD.pdf>

expanding eligibility for Temporary Protected Status for certain populations.⁶ At the same time, U.S. Customs and Border Protection (CBP) is encountering millions of illegal aliens between ports of entry, the majority of whom will likely be released into the United States.⁷

The effect of the border crisis has been readily apparent in Eagle Pass, Texas, which serves as a microcosm of the broader border disaster. To that end, we have written to request documents and communications relating to the illegal immigration crisis along the southwest border, including requesting information relating to the mass illegal alien influx event in Eagle Pass, Texas, that occurred in September 2023.⁸ Since the Committee's initial request, multiple sectors along the southwest border have similarly experienced mass influxes of illegal aliens on a sustained basis.⁹ Instead of implementing consequences to quell these mass influx events, illegal aliens surging the southwest border are rewarded with release—a fact you confirmed when you stated that the current release rate for such aliens is “above 85 percent.”¹⁰ Despite the urgency of the Committee's requests and the escalating crisis at the southwest border, the Department of Homeland Security's (DHS) response absent compulsory process has been wholly inadequate.

Mass illegal alien surges along the southwest border have continued throughout the Biden Administration, spiking to new heights in September 2023.¹¹ On September 20, 2023, a surge of illegal aliens so overwhelmed Customs and Border Protection (CBP) officials in Eagle Pass, Texas, that DHS closed two of the city's three international bridges—Bridge 1 and the international rail bridge, the second busiest rail crossing along the U.S.-Mexico border.¹² While thousands of illegal aliens flooded into Eagle Pass, shutting down lawful commerce across the bridges, the Biden Administration's DHS cut and removed concertina wire and fencing installed as a deterrent by the state of Texas, helping the aliens cross illegally.¹³

The Committee wrote on November 6, 2023, requesting documents and communications regarding the border crisis, including the mass influx event in Eagle Pass, and other related

⁶ U.S. Citizenship and Immigration Servs., *Temporary Protected Status Designated Country: Venezuela*, U.S. DEP'T OF HOMELAND SEC., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela> (last accessed Feb. 14, 2024).

⁷ U.S. Customs and Border Prot., *Sw. Land Border Encounters*, U.S. DEP'T OF HOMELAND SEC., <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last accessed Feb. 14, 2024).

⁸ Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Nov. 6, 2023); Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Dec. 8, 2023).

⁹ Nick Miroff, *U.S. faces 'unprecedented' border surge as immigration deal stalls in D.C.*, WASH. POST (Dec. 20, 2023), <https://www.washingtonpost.com/immigration/2023/12/20/border-wall-migrants-arizona-texas-surge/>.

¹⁰ Adam Shaw, Bill Melugin, and Griff Jenkins, *Mayorkas tells Border Patrol agents that 'above 85%' of illegal immigrants released into US: sources*, FOX NEWS (Jan. 8, 2024), <https://www.foxnews.com/politics/mayorkas-tells-border-patrol-agents-illegal-immigrants-released-into-us-sources>.

¹¹ Olivia Land, *Migrant facilities in Texas and Arizona overwhelmed with more than 18,500 in custody*, N. Y. POST (Dec. 20, 2023), <https://nypost.com/2023/12/20/news/migrant-facilities-in-texas-and-arizona-overwhelmed/>.

¹² *Eagle Pass, TX: Texas Border Facts*, TEXAS DEP'T OF PUB. TRANSP., <https://ftp.txdot.gov/pub/txdot/move-texas-freight/resources/fact-sheets/border/eagle-pass.pdf>; U.S. Customs and Border Protection; *Statement from CBP on Operations in Eagle Pass, Texas*, U.S. DEP'T OF HOMELAND SEC. (Sept. 20, 2023), <https://www.cbp.gov/newsroom/speeches-and-statements/statement-cbp-operations-eagle-pass-texas>.

¹³ Greg Abbott (@Greg_AbbottTX), TWITTER (Sept. 20, 2023, 4:54 PM), https://twitter.com/GregAbbott_TX/status/1704614936218149361.

topics.¹⁴ Although the Committee followed up on its requests, DHS did not provide the Committee with a response or the requested information and documents.¹⁵

On December 8, 2023, the Committee wrote again, reiterating its outstanding requests for documents and communications.¹⁶ Following that letter, the Committee reiterated its requests on multiple occasions.¹⁷ DHS finally responded on January 2, 2024, nearly two months after the Committee's original correspondence, offering to provide an "in-person," "operational briefing" the following week.¹⁸ DHS's offer for an operational briefing came just one day before the Speaker of the House of Representatives led a congressional delegation (CODEL) of more than 60 Members of Congress to Eagle Pass, which was coordinated with DHS.¹⁹ Despite our concerns that the offered operational briefing would not be responsive to the Committee's requests for documents and communications, the Committee accepted DHS's offer as an accommodation.²⁰

The Committee attempted to schedule the briefing several times during that week.²¹ Finally, at the end of the week, DHS replied, stating that DHS "trust[s] the Committee has the latest operational updates with regard to Eagle Pass and the Darien Gap following the recent CODEL," and retracted its offer to brief the Committee that week.²² In later correspondence with the Committee,²³ DHS claimed that it had been responsive to the Committee's request by citing at least one briefing that occurred before the Committee even sent its November 6 letter—a review of alien files that arose pursuant to a separate, long-outstanding request from the Committee.²⁴ To further justify its lack of responsiveness, DHS also cited other unrelated briefings, including the biweekly briefing Immigration and Customs Enforcement (ICE) provides

¹⁴ Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Nov. 6, 2023).

¹⁵ E-mail from Comm. staff, H. Comm. on the Judiciary, to Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Nov. 22, 2023) (on file with Comm.).

¹⁶ Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Dec. 8, 2023).

¹⁷ Call with Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Dec. 18, 2023); E-mail from Comm. staff, H. Comm. on the Judiciary, to Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Dec. 22, 2023) (on file with Comm.); E-mail from Comm. staff, H. Comm. on the Judiciary, to Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Dec. 29, 2023) (on file with Comm.).

¹⁸ E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Jan. 2, 2024) (on file with Comm.).

¹⁹ Jake Sherman, *Dozens of House Republicans will be at the border. We're there, too.*, PUNCHBOWL NEWS (Jan. 3, 2024), <https://punchbowl.news/article/johnson-gonzales-plan-trip-to-us-mexico-border-eagle-pass/>.

²⁰ E-mail from Comm. staff, H. Comm. on the Judiciary, to Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Jan. 4, 2024) (on file with Comm.).

²¹ *Id.*; E-mail from Comm. staff, H. Comm. on the Judiciary, to Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Jan. 10, 2024) (on file with Comm.); E-mail from Comm. staff, H. Comm. on the Judiciary, to Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Jan. 11, 2024) (on file with Comm.).

²² E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Jan. 11, 2024) (on file with Comm.).

²³ Letter from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Jim Jordan et al., Chairman, H. Comm. on the Judiciary (Feb. 2, 2024).

²⁴ Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (May 19, 2023).

to all authorizing congressional committees on a routine basis as well as the posting of statistics on public-facing websites.²⁵

If DHS believed, as it purports, that briefing Members of Congress attending the Speaker's CODEL served as a substitute for providing the Committee with the offered operational briefing, it is curious why DHS would make such an offer to the Committee just one day before the CODEL.²⁶ Indeed, only after the CODEL did DHS adopt this interpretation.²⁷ As the Committee has maintained, however, our requests are for documents and communications, rather than an operational briefing.²⁸ The Committee does not consider the unrelated briefings DHS cites responsive to its requests.

DHS further noted that it is currently in litigation against the state of Texas,²⁹ asserting that it "has sought to be responsive to those aspects of [the Committee's] request[s] that do not raise legal ... issues"³⁰ but that DHS "will not be providing any materials subject to pending litigation."³¹ This rationale is unpersuasive because the Committee is not a party to the referenced litigation, and it has no bearing on the Committee's authority to conduct oversight³²—oversight which also predates the January 2024 court filings that DHS cites.³³ As the Supreme Court has found:

It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.³⁴

²⁵ E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Jan. 15, 2024) (on file with Comm.).

²⁶ E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Jan. 2, 2024) (on file with Comm.). DHS offered an operational briefing to the Committee one day before the Speaker's CODEL, which it had worked to coordinate.

²⁷ E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Jan. 12, 2024) (on file with Comm.).

²⁸ E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Jan. 11, 2024) (on file with Comm.).

²⁹ E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Jan. 11, 2024) (on file with Comm.).

³⁰ Letter from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Jim Jordan et al., Chairman, H. Comm. on the Judiciary (Feb. 2, 2024).

³¹ E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Feb. 15, 2024) (on file with Comm.).

³² 279 U.S. 263, 295 (1929).

³³ Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Nov. 6, 2023). The Chairman's letter predates the January 12, 2024, filings cited in emails from DHS as a purported justification for failing to provide information responsive to legitimate oversight requests.

³⁴ 279 U.S. 263, 295 (1929).

Finally, DHS has also asserted that the Committee's requests are "extremely broad and vague."³⁵ The Committee has in good faith attempted to work with DHS to scope and prioritize its requests.³⁶ However, the reality is, in the more than three months since the Committee's initial request, DHS has produced nothing at all in response to the Committee's November 6 and December 8 letters, and it was only months after the letters were sent that DHS even attempted to engage on the substance of such requests.³⁷

The indefinite suspension of lawful trade and travel at multiple crossings along the southwest border is yet another example of the Biden Administration's prioritization of illegal aliens to the detriment of Americans.³⁸ Indeed, the events in Eagle Pass illustrate the broader effects of the Biden Administration's open-borders policies: benefits for illegal aliens and harm and endangerment for American communities. Moreover, the Department's failure to produce materials requested in the course of the Committee's oversight is wholly unacceptable and impedes the Committee's ability to fulfill its constitutional obligations.

The Supreme Court has recognized that Congress has a "broad and indispensable" power to conduct oversight, which "encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them."³⁹ Pursuant to the Rules of the House of Representatives, the Committee has jurisdiction to conduct oversight of matters concerning federal immigration law to inform potential legislative reforms.⁴⁰ These potential legislative reforms could include, among other proposals, legislation to end the mass catch-and-release of illegal aliens or legislation to bar DHS from dismantling structures, such as wire or fencing, placed for the purpose of deterring illegal immigration. The information the Committee has requested is necessary to inform such potential reforms and to understand DHS's current application of the immigration laws.

³⁵ Letter from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Jim Jordan et al., Chairman, H. Comm. on the Judiciary (Feb. 2, 2024).

³⁶ E-mail from Comm. staff, H. Comm. on the Judiciary, to Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Feb. 6, 2024) (on file with Comm.); E-mail from Comm. staff, H. Comm. on the Judiciary, to Off. of Leg. Aff., U.S. Dep't of Homeland Sec. (Feb. 8, 2024) (on file with Comm.); Telephone call with Off. of Leg. Aff. (Feb. 13, 2024).

³⁷ E-mail from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Comm. staff, H. Comm. on the Judiciary (Jan. 2, 2024) (on file with Comm.); Letter from Off. of Leg. Aff., U.S. Dep't of Homeland Sec., to Jim Jordan et al., Chairman, H. Comm. on the Judiciary (Feb. 2, 2024).

³⁸ U.S. Customs and Border Prot., *Statement from CBP on Operations in Lukeville, AZ*, U.S. DEP'T OF HOMELAND SEC. (Nov. 27, 2023), <https://www.cbp.gov/newsroom/speeches-and-statements/statement-cbp-operations-lukeville-az>; U.S. Customs and Border Prot., *Statement from CBP on Operations in Eagle Pass, Texas and Lukeville, Arizona*, U.S. DEP'T OF HOMELAND SEC. (Dec. 4, 2023), <https://www.cbp.gov/newsroom/speeches-and-statements/statement-cbp-operations-eagle-pass-texas-and-lukeville-arizona>; U.S. Customs and Border Prot., *Statement from CBP on operations in San Diego, California*, U.S. DEP'T OF HOMELAND SEC. (Dec. 7, 2023), <https://www.cbp.gov/newsroom/speeches-and-statements/statement-cbp-operations-san-diego-california>; U.S. Customs and Border Prot., *Statement from CBP on Suspension of Rail Operations in Eagle Pass and El Paso, Texas*, U.S. DEP'T OF HOMELAND SEC. (Dec. 17, 2023), <https://www.cbp.gov/newsroom/speeches-and-statements/statement-cbp-suspension-rail-operations-eagle-pass-and-el-paso>.

³⁹ See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

⁴⁰ Rules of the House of Representatives R. X (2023).

The Honorable Alejandro Mayorkas

February 29, 2024

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Accordingly, and given your disregard of our earlier voluntary requests, please find attached a subpoena.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is stylized with a large, looped "J" and a cursive "Jordan".

Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure