



One Hundred Eighteenth Congress  
Committee on Homeland Security  
U.S. House of Representatives  
Washington, DC 20515

February 9, 2023

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
2703 Martin Luther King Jr. Avenue, Southeast  
Washington, D.C. 20593

Dear Mr. Secretary:

The Committee on Homeland Security is conducting oversight on the processing, detention, and release of illegal aliens encountered at the Southwest Border (SWB). In the first four months of this fiscal year alone, Customs and Border Protection (CBP) has recorded over 700,000<sup>1</sup> alien encounters at the SWB – more than in any full fiscal year between 2009 and 2018.<sup>2</sup> With these record setting encounters come record setting releases. In December 2022 alone, CBP released into the U.S. interior over 160,000 migrants from the SWB.<sup>3</sup>

As you know, under the Immigration and Nationality Act (INA), Congress mandated that the Department of Homeland Security (DHS) detain illegal aliens encountered at the border, while pending expedited removal<sup>4</sup> or removal proceedings under INA § 240.<sup>5</sup> Congress also gave DHS limited authority to grant parole to release these otherwise detainable illegal aliens applying for admission on a case-by-case basis for “urgent humanitarian reasons or significant public benefit.”<sup>6</sup> The administration heavily relies on the very limited parole authority to justify its policy of releasing illegal aliens *en masse*, including tens of thousands without issuing a Notice to Appear.<sup>7</sup> Additionally, the administration cites this limited parole authority to justify its new policy to allow

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<sup>1</sup> <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>2</sup> <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/US59B8~1.PDF>.

<sup>3</sup> <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>4</sup> INA § 235(b)(1)(B)(ii), (iii)(IV).

<sup>5</sup> INA § 235(a)(1), (b)(2).

<sup>6</sup> INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

<sup>7</sup> Press Release, Sen. Johnson, Sen. Johnson Releases Immigration Data Showing Failures of the Biden Administration’s Disastrous Border Policies (Jan. 11, 2022), <https://www.ronjohnson.senate.gov/2022/1/sen-johnson-releases-immigration-data-showing-failures-of-the-biden-administration-s-disastrous-border-policies>.

30,000 Venezuelans, Cubans, Haitians, and Nicaraguans per month to apply from outside the United States and gain entry into the United States.<sup>8</sup>

The Committee has a responsibility to ensure that the laws impacting border security are effective and that DHS is conducting border operations in accordance with those laws and in a manner that ensures that the homeland is secure. To assist the Committee with its oversight, please provide responses to the following questions:

- Since January 1, 2021, has DHS received any input, formal or informal, from non-government organizations, either for- or non-profit, on its policies and procedures for apprehension, detention, and removal of aliens encountered at the SWB? If so, please provide the organization name, date of input received, and summary of input.
- Since January 1, 2021, how many illegal aliens have been apprehended by CBP at the SWB and released into the United States? Please break out by processing outcome (i.e., warrant of arrest/Notice to Appear (NTA), NTA/Own Recognizance, Parole + ATD).
- Since January 1, 2021, how many aliens, who presented themselves for inspection at a SWB port of entry without travel documents, has CBP released into the United States? Please break out by processing outcome (i.e., warrant of arrest/NTA, NTA/Own Recognizance, Parole + ATD).
- Since January 1, 2021, as to all the aliens that CBP released into the United States, does DHS track each alien until the alien has reported to an Enforcement and Removal Operations (ERO) field office, given that in some locations appointment backlog for scheduling an ERO appointment is booked years out (in some field offices through June 2028)?
- Since January 1, 2021, how many aliens, either apprehended by CBP or who presented themselves for inspection at a SWB port of entry without travel documents, had a prior order of removal reinstated and were removed? How many remained detained pending the adjudication of a reasonable fear review? How many were released pending the adjudication of a reasonable fear review?
- Since CBP began issuing Notices to Report, how many aliens reported?
  - Of the aliens that reported, how many were issued a Notice to Appear?

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<sup>8</sup> The White House, FACT SHEET: Biden-Harris Administration Announces New Border Enforcement Actions (Jan. 5, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/>.

- Since January 1, 2021, how many aliens have been released from CBP custody on Alternatives to Detention (ATD)?
- Since CBP began release on the Parole + ATD program, how many aliens reported for supervision?
  - Of the aliens that reported, how many were issued a Notice to Appear?

To help understand DHS's decisions about processing, detention, and release of aliens at the SWB, the Committee requests that DHS produce the following documents, in electronic format:

- From January 1, 2021, to the present:
  - copies of all formal policies and procedures issued regarding the apprehension, detention, and removal of aliens encountered at the SWB;
  - all documents and communications, either formal or informal, pertaining to guidance on parole decision making at the SWB;
  - all documents and communications, either formal or informal, that address policies and/or procedures for expedited processing of aliens;
  - all documents and communications pertaining to the decision to establish a Notice to Report process for aliens at the SWB;
  - all documents and communications pertaining to the decision to establish a Parole + ATD program to process aliens at the SWB;
  - all documents and communications from CBP Headquarters providing guidance to the field offices about processing illegal aliens, including but not limited to:
    - not assigning Alien Numbers to reduce processing times;
    - implementing the Notice to Report Processing;
    - Implementing the Parole + ATD program;
    - The April 26, 2022, email from U.S. Border Patrol's Law Enforcement Operations Directorate regarding issuing Alien Numbers for the Parole + ATD program

- a written summary of all procedures regarding the apprehension, detention, and removal of aliens encountered at the SWB that have been verbally communicated from headquarters to CBP sector leads.
- Any checklists or criteria that CBP officers or Border Patrol agents use to track release, parole, or detention decisions;
- Prior to November 2, 2021, all documents and communications addressing guidance, formal or informal, about CBP issuing Notices to Report to aliens at the SWB;
- Any memo issued on or around November 2, 2021, ending the use of the Notice to Report and implementing the Parole + ATD program; and
- Any memo issued on or around July 18, 2022, about implementing the Parole + ATD program.

To assist in its oversight efforts and confirm CBP's policies and procedures that have been implemented, the Committee requests the following sampling of data and documents, in electronic format:

- On October 10, 2021:
  - The total number of aliens encountered at the SWB, broken down by classification;
  - For each single adult encountered at the border:
    - Form I213;
    - Form I385;
    - Any forms or notes documenting the decision making to determine the processing outcome; and
    - The processing outcome;
- On July 28, 2022:
  - The total number of aliens encountered at the SWB, broken down by classification;
  - For the lead member of each family unit encountered at the border:

- Form I213;
- Form I385;
- Any forms or notes documenting the decision making to determine the processing outcome; and
- The processing outcome.

In accordance with House Rule X, the Committee has jurisdiction over border security and shall “review and study on a continuing basis all Government activities relating to homeland security”. DHS border operations are unquestionably the first line of defense to our homeland security and squarely within the Committee’s jurisdiction. In addition, this request and any documents created because of this request are and will be deemed Congressional documents and property of the House Committee on Homeland Security.

Thank you for your prompt attention to and compliance with this request. Please provide your response no later than February 28, 2023. Should you or your staff have any questions, please do not hesitate to reach out to Elizabeth O’Connor on my Committee Staff at (202) 226-8417.

Sincerely,

A handwritten signature in black ink that reads "Mark E. Green". The signature is written in a cursive, slightly slanted style.

MARK E. GREEN, MD