



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

July 12, 2024

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

Secretary Mayorkas:

To assist the Committee on Homeland Security (Committee) with its oversight of the Department of Homeland Security's (Department) handling of the elevated national security risk presented by aliens with terrorist ties illegally crossing the Southwest border into the United States, enclosed is a subpoena compelling the production of outstanding documents and information requested in the May 19, 2023 and September 29, 2023 letters to you from Chairman Jim Jordan of the Committee on the Judiciary (Judiciary), Chairman James Comer of the Committee on Oversight and Accountability (Oversight), and me.¹ These requests were reiterated, among others, in my January 17, 2024 letter.²

For more than a year, the Committee made multiple attempts to obtain the requested documents and information without compulsory process. On May 19, 2023, Chairman Jordan, Chairman Comer, and I sent you a letter requesting specific documents and information relating to gotaways and illegal aliens on the terrorist screening database encountered at the Southwest border since January 2021.³ On September 11, 2023, the Department's response directed the three committees to publicly available information and offered a classified briefing, but failed to provide any of the requested documents.⁴ On September 29, 2023, Chairman Jordan, Chairman Comer, and I sent you a follow up letter reiterating our requests from the May 19, 2023 letter and

¹ Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., Hon. James Comer, Chairman, Comm. on Oversight & Accountability, & Hon. Jim Jordan, Chairman, Comm. on the Judiciary, to Hon. Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (May 19, 2023); Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., Hon. James Comer, Chairman, Comm. on Oversight & Accountability, & Hon. Jim Jordan, Chairman, Comm. on the Judiciary, to Hon. Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Sept. 29, 2023). The September 29, 2023 letter specifically noted, "If the Department [of Homeland Security] continues to fail to produce the requested documents by October 13, 2023, [the Committees] will consider other measures, including use of the compulsory process, to gain compliance and obtain this material."

² Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Jan. 17, 2024).

³ Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (May 19, 2023).

⁴ Letter from Off. of Legis. Affairs, U.S. Dep't of Homeland Sec., to Hon. Mark Green, Chairman, H. Comm. on Homeland Sec. (Sept. 11, 2023).

expressing that a briefing, while helpful, would be an insufficient substitute for the documents and information sought.⁵

On October 13, 2023, the Committees were advised that the Department and U.S. Customs and Border Protection (CBP) were “prepared to provide access to view the Forms I-213” to staff with “appropriate security clearances in a [S]ensitive [C]ompartmented [I]nformation [F]acility” (SCIF) at CBP headquarters.⁶ Even while purporting to provide access, the Department’s tactics to reduce transparency were evident. For example, citing space limitations, the Department limited attendance to the November 1, 2023 in-camera review session to only six staff members.⁷ The SCIF used at the first review, however, had 27 total seats, most of which sat empty. The Department further limited review to only staff holding a Top Secret/Sensitive Compartmented Information (TS/SCI) clearance even though the Forms I-213 provided for review were unclassified and marked Law Enforcement Sensitive/For Official Use Only (LES/FOUO). Most critically, the Department only provided a small sub-set of the Forms I-213 requested, and it refused to provide print versions of them, opting instead to project pages on electronic monitors, making review and analysis of the documents nearly impossible.

On November 3, 2023, after the first in-camera review session, Oversight staff emailed the Department’s Office of Legislative Affairs (OLA) expressing disappointment in the Department’s handling of the in-camera review, and requesting times the following week when the Department could provide Members of Congress an in-camera review if the Department continued to refuse production.⁸ On November 7, 2023, the Department emailed Committee staff to offer a second staff-level, in-camera review of redacted Forms I-213 on November 8, 2023.⁹ The Department increased attendance limits for the second review to “three staffers each from majority and minority of each committee.”¹⁰ During the session, the Department provided redacted Forms I-213 in binders, organized only by year of encounter, making it impossible to analyze or thoroughly review each case. As part of this review, as was the case for the first review, the Department did not provide any individual’s detention, case disposition, or any associated derogatory information. The Department noted that without approval from the Federal Bureau of Investigation (FBI), staff would not be provided associated derogatory information of aliens with terrorist ties illegally crossing the Southwest border into the United States.

⁵ Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 29, 2023).

⁶ Letter from Off. of Legis. Aff., Dep’t of Homeland Sec., to Hon. James Comer, Chairman, H. Comm, on Oversight & Accountability (Oct. 13, 2023).

⁷ E-mail from Off. of Legis. Aff., Dep’t of Homeland Sec., to Staff, H. Comm. on Homeland Sec., Staff, H. Comm. on the Judiciary, & Staff, H. Comm. on Oversight & Accountability (Oct. 30, 2023 11:11 EDT) (on file with author).

⁸ E-mail from Staff, H. Comm. on Oversight & Accountability, to Off. of Legis. Aff., Dep’t of Homeland Sec. (Nov. 3, 2023, 16:03 EDT) (on file with author).

⁹ E-mail from Off. of Legis. Aff., Dep’t of Homeland Sec., to Staff, H. Comm. on Homeland Sec., Staff, H. Comm. on the Judiciary, & Staff, H. Comm. on Oversight & Accountability (Nov. 7, 2023 12:29 EDT) (on file with author).

¹⁰ *Id.*

On January 9, 2024, Committee staff simultaneously discussed with OLA and FBI via telephone call the outstanding requests from the May 19, 2023 and September 29, 2023 letters.¹¹ During the call, the Department advised that it would: (i) provide an update on another in-camera review of Forms I-213 for Committee Members and staff; (ii) produce a table or chart of the detention and case dispositions; and (iii) work with FBI to provide a list of each agency that is the nominator or holder of the derogatory information for each relevant alien.¹² The Department agreed to provide a status report by January 19, 2024.¹³

On January 17, 2024, Committee staff emailed OLA and FBI requesting a written status update by January 19, 2024 and offering another follow up meeting on January 22, 2024, to discuss the agencies' progress.¹⁴ Within about an hour, FBI responded that an internal meeting was scheduled for January 22, 2024 to discuss the outstanding letters.¹⁵ Later that same day, the Committee sent the Department another letter reiterating its request for all the outstanding documents and information, including those from the May 19, 2023 and September 29, 2023 letters.¹⁶

On January 19, 2024, the Department sent Committee staff an email suggesting the group discuss the status of the requests after FBI's internal meeting,¹⁷ and a follow up telephone call was scheduled for January 25, 2024. During that telephone call, the Department advised that it would provide an update on a disposition chart and an explanation for what documents and information requested from the May 19, 2023 letter would remain outstanding by January 30, 2024. On January 31, 2024, the Department sent an email to Committee staff and FBI advising that they were just then "pulling A Files related to the Committee's May and September letters and queuing them for review" and were working on a disposition document.¹⁸ The Department further advised that it would provide an update on its efforts by February 20, 2024.¹⁹ It remains unclear why the Department waited over eight months to begin pulling and reviewing Alien Files that the Committee requested some nine months earlier.

The Department failed to provide an update on its efforts until April 16, 2024, when OLA emailed Committee staff offering an in-camera review of a table of the custody and case

¹¹ Telephone Call with Office of Legis. Aff., Dep't of Homeland Sec. & Off. of Cong. Aff., Fed. Bureau of Investigation (Jan 9, 2024).

¹² *Id.*

¹³ *Id.*

¹⁴ E-mail from Staff, H. Comm. on Homeland Sec., to Off. of Legis. Aff., et al., Dep't of Homeland Sec. & Off. of Cong. Aff., Fed. Bureau of Investigation (Jan. 17, 2024, 10:02 EDT).

¹⁵ E-mail from Off. of Cong. Affairs, Fed. Bureau of Investigation, to Staff, H. Comm. on Homeland Sec. (Jan. 17, 2024, 11:09 EDT).

¹⁶ Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Jan. 17, 2024).

¹⁷ E-mail from Off. of Legis. Aff., Dep't of Homeland Sec., to Staff, H. Comm. on Homeland Sec. & Off. of Cong. Aff., Fed. Bureau of Investigation, (Jan. 19, 2024 16:46 EDT) (on file with author).

¹⁸ E-mail from Off. of Legis. Aff., Dep't of Homeland Sec., to Staff, H. Comm. on Homeland Sec., Staff, & Off. of Cong. Aff., Fed. Bureau of Investigation (Jan. 31, 2024 10:00 EDT) (on file with author).

¹⁹ *Id.*

disposition status of relevant aliens encountered at the Southwest border.²⁰ On April 18, 2024, Committee staff agreed to make staff available for the proposed in-camera review.²¹ Committee staff also requested clarity on why the Department could not produce a hard copy of the document to the Committee, whether the document was classified as TS/SCI, and where the review would take place.²² On April 24, 2024, an OLA official simply responded that “[t]he document is pre-decisional. I can’t provide details beyond what I’ve already shared.”²³

On June 14, 2024, staff from the Committee, Judiciary, Oversight, and Permanent Select Committee on Intelligence were provided an in-camera review of the detention and case disposition table in a SCIF. The table provided had several columns of information including date of encounter, country of origin, current detention status, and current immigration case status. The presentation of the information prohibited staff to conduct any meaningful analysis on the cases nor connect the dispositions with previously reviewed Forms I-213. When questioned about the classification level of the information provided, the Department advised that the information was unclassified and maintained at the LES/FOUO level. The Department further advised that because it did not have authority to identify the aliens on the Terrorist Screening Database (TSDB), if the disposition information was released to staff and then to the public, the public could potentially combine public reporting with the disposition table information and identify the alien. This explanation is insufficient to permit the Department to withhold information from the Committee.

Despite over a year of follow ups and accommodating the Department’s protracted schedules and insufficient attempts to respond to some of the requests in the May 19, 2023 letter, the Committee’s requests largely remain unsatisfied and are 409 days delinquent with no definitive timeline for production. The Department’s demonstrated approach to indefinitely protract production necessitates issuance of the enclosed subpoena.

The Committee requires the documents and information compelled by the attached subpoena to fully evaluate potential legislation to reform the Department’s handling of its encounters with aliens on the TSDB at the Southwest border and the potential security vulnerability those encounters pose to homeland security. The in-camera reviews provided have been insufficient for the Committee to fully analyze and evaluate the Department’s operations and decisions. Thus far, the Department has rendered it impossible for the Committee to understand the complete case status for even one relevant alien. The Department’s functions relating to the border and security are directly within the purview of the Committee’s oversight authorities.

²⁰ E-mail from Off. of Legis. Aff., Dep’t of Homeland Sec., to Staff, et al., H. Comm. on Homeland Sec. (Apr. 16, 2024 8:40 EDT) (on file with author).

²¹ E-mail from Staff, H. Comm. on Homeland Sec., to Off. of Legis. Aff., Dep’t of Homeland Sec. & Staff, H. Comm. on Homeland Sec. (Apr. 18, 2024, 11:41 EDT).

²² *Id.*

²³ E-mail from Off. of Legis. Aff., Dep’t of Homeland Sec., to Staff, H. Comm. on Homeland Sec. (Apr. 24, 2024 15:00 EDT) (on file with author).

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Per Rule X of the U.S House of Representatives, the Committee on Homeland Security is the principal committee of jurisdiction for overall homeland security policy, and has special oversight functions of “all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department of Homeland Security.”

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, M.D.
Chairman
Committee on Homeland Security

Encl.

cc: The Honorable Bennie Thompson, Ranking Member
Committee on Homeland Security