

#### + Tim

From: ARDITTI, AVI		
Sent: Friday, September 24, 2021 6:	52 PM	
To: LUGO, ALICE (b)(6)	GEER, HARLAN (b)(6)	CARNES,
ALEXANDRA (b)(6)	HIMMEL, CHLOE (b)(6)	
Hymowitz, Emily (b)(6)	SHENKLE, ABBY (b)(6)	
SHAHOULIAN, DAVID (b)(6)	HUNTER, ADAM (b)(6)	
KELLEY, ANGELA (b)(6)	SCHMIDT, PATRICK R (b)(6)	
SCHROEDER, DANIEL W (b)(6)	Bertran-H	arris, Jonathon
(b)(6)	Hackbarth, Sean M (b)(6)	
Fauquet, Brandon L (b)(6)	CORBIN, SUSAN (b)	(6)
MAIA SILVA, EDUARDO (b)(6)	OLA OCC (b)(6)	

Subject: WH Daily Press Briefing / S1 Appearance

MS. PSAKI: Hi, everyone. Okay. We're thrilled to have Secretary Mayorkas join us here today. He's going to be making some brief comments providing you an update, and we'll take as many questions as we can. I would just be mindful of your colleagues so we can get around to as many as possible.

With that, I'll turn it over to Secretary Mayorkas.

SECRETARY MAYORKAS: Thank you very much. And good afternoon, everyone. Less than one week ago, there were approximately 15,000 migrants in Del Rio, Texas, the great majority of whom were Haitian nationals. This was the result of an unprecedented movement of a very large number of people traveling to a single point of the border within a matter of a few days.

We responded with a surge of resources to address the humanitarian needs of the individuals, many of whom include families with young children.

We also applied our months-long standard operating procedures at the border, which we have been applying to all migrants encountered at the border during this very challenging time of the COVID-19 pandemic.

As of this morning, there are no longer any migrants in the camp underneath the Del Rio International Bridge. I will walk through what we have done, how we have done it; explain the processes; and provide data that you have requested.

But first, I want to make one important point. In the midst of meeting these challenges, we -- our entire nation -- saw horrifying images that do not reflect who we are, who we aspire to be, or the integrity and values of our truly heroic personnel in the Department of Homeland Security.

The investigation into what occurred has not yet concluded. We know that those images painfully conjured up the worst elements of our nation's ongoing battle against systemic racism.

We have been swift and thorough in our response. First, we immediately contacted the Office of Inspector General and launched an investigation into the events that were captured in the disturbing images of horse patrol units.

We ceased the use of horse patrol units in the area. The agents involved in these incidents have been assigned to administrative duties and are not interacting with migrants while the investigation is ongoing.

I directed the personnel from the CBP Office of Professional Responsibility to be on site in Del Rio fulltime to ensure adherence to the policies, training, and values of our department. The highest levels of the CBP Office of Professional Responsibility are leading the investigation, which will conclude quickly. The results of the investigation I will make public.

The actions that are taken as a -- are as a result of the -- what we have seen in those images. The investigation will be compelled -- the results will be compelled by the facts that are adduced and nothing less.

Let me be clear: The department does not tolerate any mistreatment of any migrant and will not tolerate any violation of its values, principles, and ethics.

Now I would like to turn to our operational response. DHS led the mobilization of a whole-of-government response to address the challenging situation in Del Rio. DHS immediately worked to address the acute humanitarian needs of the migrants themselves by partnering with federal and nongovernmental agencies and entities. We rapidly deployed basic services like drinking water, food, clothing, and portable toilets.

I am grateful to the Red Cross for providing more than 17,000 hygiene kits and the World Central Kitchen for contributing more than 14,000 meals per day to supplement other food programs.

We surged medical resources and capacity, including over 150 medical professionals, to provide health services to ensure the safety of the migrants, employees, and the surrounding community. We provided personal protective equipment, including facemasks. We erected four climate-controlled tents to support housing for vulnerable populations.

Let me go through our operational response. Simultaneously with the humanitarian response, we in the Department of Homeland Security implemented a series of operational measures to process migrants consistent with existing laws, policies, and procedures. In particular, CBP -- Customs and Border Protection -- surged 600 agents, officers, and DHS volunteer force personnel to the Del Rio sector to provide operational support.

We also -- DHS officers and agents conducted 24-hour patrols for general safety, as well as to identify anyone who might be in medical distress.

ICE, the U.S. Coast Guard, the Department of Defense, and the Department of Justice provided transportation support to transfer migrants out of Del Rio to other Border Patrol sectors with capacity.

Working with the Department of State in Haiti, DHS increased the number of removal flights to Haiti commensurate with the country's capacity to receive.

Importantly, USAID has established a \$5.5 million program to provide on-the-ground assistance to repatriated Haitian migrants.

Nearly 30,000 migrants have been encountered at Del Rio since September 9th, with the highest number at one time reaching approximately 15,000.

Today, we have no migrants remaining in the camp under the International Bridge.

Migrants continue to be expelled under the CDC's Title 42 authority. Title 42 is a public health authority and not an immigration policy. And it is important to note that Title 42 is applicable and has been applicable to all irregular migration during this pandemic. It is not specific to Haitian nationals or the current situation.

Some more data: To date, DHS has conducted 17 expulsion flights to Haiti with approximately 2,000 individuals. Those who are not expelled under Title 42 are placed in immigration removal proceedings.

Let me take a step back and explain the process. There are two exceptions to the applicability of Title 42, the public health authority. Number one is if an individual has an acute vulnerability, such as an urgent medical care. And two, if, in fact, our operational capacity is such that we are not able to execute the Title 42 authority that rests with the Centers for Disease Control.

I should also say that there is a Convention Against Torture exception if someone claims torture, which is a distinct legal standard.

Individuals, as I mentioned, with acute vulnerability can be accepted from the Title 42 application. Approximately 12,400 individuals will have their cases heard by an immigration judge to make a determination on whether they will be removed or permitted to remain in the United States. That is a piece of data that has been requested of us.

If someone is not subject to Title 42 expulsion for the three reasons that I explained -- acute vulnerability, operational capacity limitations, or a Convention Against Torture exception -- then the individual is placed in immigration proceedings. That means they go before an immigration judge in an immigration court.

If they make a claim that they have a basis under law to remain in the United States, then the judge will hear and adjudicate that claim. If the judge determines that the claim is not valid, the individual will be removed.

An estimated 8,000 migrants have decided to return to Mexico voluntarily, and just over 5,000 are being processed by DHS to determine whether they will be expelled or placed in immigration removal proceedings under Title 8.

We have previously articulated publicly, we've previously expressed that in light of the fact that we had such a significant number of individuals in one particular section in Del Rio, Texas, that we were moving people to other Customs and Border Protection processing centers to ensure the safe and secure processing of those individuals. And we will assess the ability to exercise the Title 42 public health authority in those processing centers.

And if any of the exceptions apply, then we will place those individuals in immigration enforcement proceedings. But if we are able to expel them under Title 42 -- because that is indeed a public health imperative as determined by the Centers for Disease Control -- we will do so.

And with that, I'll take your questions.

MS. PSAKI: Steve.

Q Thank you. Mr. Secretary, thank you very much for coming in to take our questions.

SECRETARY MAYORKAS: Of course.

Q The first question is that I was hoping you could explain more of your view that these agents on the border acted in a way that violated policies or procedures. Could you tell us what they did wrong to start?

And then my second question has to do with what this episode -- how this episode informs your understanding or thinking about the current and ongoing asylum review, and whether, perhaps if the administration were to take a more permissive stance to -- toward asylum, membership in a particular social group, that this episode could be seen as one of many in the future.

SECRETARY MAYORKAS: So I -- I think, if I may, you're conflating two very different phenomenon, two very different processes.

First of all, the images, as I expressed earlier -- the images horrified us in terms of what they suggest and what they conjure up, in terms of not only our nation's history, but, unfortunately, the fact that that page of history has not been turned entirely. And that means that there is much work to do, and we are very focused on doing it.

But I will not prejudge the facts. I do not, in any way, want to impair the integrity of the investigative process. We have investigators who are looking at it independently. They will draw their conclusions according to their standard operating procedures, and then the results of that investigation will be determined by the facts that are adduced.

Now, with respect to the asylum process that has -- that is an independent process -- and I'm not sure I understood your question, if you're asking about the definition of a particular social group. And just for everyone's benefit, the asylum laws provide that an -- the first step in an asylum process is a claim of credible fear.

Economic need, flight from generalized violence does not qualify as credible fear, but rather credible fear is credible fear of persecution by reason of one's membership in a particular social group.

What is the definition of a "particular social group" was significantly constrained -- that's an understatement -- in the Trump administration. And there is a body of law that speaks to that definition, and that definition is currently under review.

Q Right. But, Mr. Secretary, if I may -- and forgive me for -- just to follow up on this point --

SECRETARY MAYORKAS: Yes.

Q The question was: If this administration were to take a more permissive stance toward that definition, could this be -- what we've just experienced in the last several weeks -- just the first of many similar instances to occur in this country on the border?

SECRETARY MAYORKAS: What instance are you referring to? I'm sorry.

Q Well, we have 15,000 migrants who -- that the United States government has had to now process. And --

SECRETARY MAYORKAS: So, we determine -- we determine the standards to apply in a claim of persecution according to the principles that a government should have both domestically and in the international architecture with the treatment of individuals who are fleeing persecution by reason of their membership in a particular social group. It is not a tool of deterrence to define what a "particular social group" means.

MS. PSAKI: Tam.

Q Yeah. The people who -- sorry, I'm here hiding behind a mask. (Laughter.)

SECRETARY MAYORKAS: I'm sorry. Thank you.

Q The people who were under the bridge -- you've talked about -- some of them have gone to Mexico, some of them have been flown to Haiti. The others, are they spread out at CPB holding facilities? Have some been released into the community or released to family members awaiting hearing?

SECRETARY MAYORKAS: So you ask a very --

Q What's their status?

SECRETARY MAYORKAS: So let me be clear: So, some have been returned to Haiti, indeed. Others have been moved to different processing facilities along the border in light of operational capacity, and then many of them will be returned to Haiti from there. And if any of the exceptions apply, they will not be returned to Haiti but placed in immigration enforcement proceedings.

I should say "released" is a very general term, and I may need to drill down on that, if I may. Individuals - some of them are detained; some of them are placed on alternatives to detention. We remain in touch with them. We monitor them to ensure their appearance in court at the designated time of appearance. Does that answer your question?

Q It does. One other question.

SECRETARY MAYORKAS: And I gave --

Q Yeah.

SECRETARY MAYORKAS: -- and I provided the data, if I need to -- to do so again.

Q Yes. No, I got that. The broader question is that it seems like there are border crises that keep popping up, sort of like whack-a-mole. Every month or so, there's another clump of people or another major issue or unaccompanied minors or -- and is there a plan to maybe have, you know, like FEMA-type teams that go to these crisis points? Or is the goal to somehow stop having these crises that keep breaking out?

SECRETARY MAYORKAS: Well, look, you mentioned FEMA. So two points, if I may. Let me first address the fund- -- well, let me go in reverse.

From an operational response perspective, we addressed the challenge of unaccompanied children in March. And I said then that we had a plan, we were executing our plan, and it would take time. And in fact, within 60 days or so, we went from an average time of an unaccompanied child in a Border Patrol station of 124 hours to less than 25 hours, and we did that through our operational capacity throughout the Department of Homeland Security, as directed by the President, in an all-of- government effort.

Here, last weekend, we had approximately 15,000 individuals in the Del Rio section. I committed to addressing that within 10 days, and today we have none. And that was because of the Department of Homeland Security's assets, with the assistance of others across the government. That is something very different than the fact of the dynamism of irregular migration writ large and the fact that this is a situation that has occurred from time to time, ever since I can remember, in my more than 20 years of government service.

And the President has spoken very powerfully about this from day one and before he assumed office. First and foremost, and most fundamentally and foundationally, we are dealing with a broken immigration system, and we need legislative reform.

And everyone agrees. In a world where unanimity is so difficult to achieve, there is one thing that -- as to which there is unanimity, and that is the need for comprehensive immigration reform. And unfortunately, it seems to remain elusive, but our real dedication to achieving it is unrelenting, and we continue to do so. Number one.

Number two, we have a three-part plan: We invest in the root causes to address the need -- to address the reason why people leave the homes in which they live and take a perilous journey that they should not take. Second, the building of safe, orderly, and humane pathways. And third, rebuilding an asylum system and a refugee program that were dismantled in the prior administration.

This takes time, and we are executing our plans.

MS. PSAKI: Ed.

Q Thank you, Mr. Secretary. Thank you for being here. I know we had suggested it'd be great to have you, so it's good to see you in the same week we made that request.

Starting with the situation in Del Rio, the mounted units are temporarily suspended. Are you considering eliminating them altogether?

SECRETARY MAYORKAS: So we're going to -- we're going to take a look. What we are focused on right now is addressing the urgency of the situation in Del Rio under that bridge. We are still getting through it.

Remember, as I mentioned in response to the prior question, we still have operational needs across the border with respect to this particular population of individuals. But we're going to be taking a look at this.

What the horse patrol is customarily used to do -- for everyone's benefit -- is -- you know, horses are able to cross terrain that might not otherwise be traversed. And what they often do -- and, in fact, most often do -- is assess the situation and actually assist in helping people in distress. And that horse patrol -- the horse patrol that the Customs and Border Protection employs -- the Border Patrol, specifically -- has actually saved lives many times before. But we will take a look.

Q And just on -- because yours is such a sprawling department, you face multiple issues at once. The situation regarding Afghan refugees that are being processed by your department -- we've had a few questions on that that haven't entirely been answered, and I'm just curious if you know how many cases of forced marriage or so-called "child brides" has DHS found in the system so far?

SECRETARY MAYORKAS: To my knowledge, we have not found one. But I will tell you that we have experts at the airport and beyond who understand that phenomenon very, very well, who know how to detect the indicia, the signs of any such activity, and are able to place people in secondary screening, discern the facts, and make the decisions that the facts so warrant. We are very skilled in that.

MS. PSAKI: Rachel.

Q Thank you, Mr. Secretary. I know you said you'd be looking into this, but the President was really clear today. He said those Border Patrol agents on horseback seen in those images "will pay." He said, "It's dangerous." He says, "It's wrong." And he said, "There will be consequences." So do you disagree with that?

SECRETARY MAYORKAS: Oh -- I know the President was echoing the sentiments of the American public in response to the images and what those images suggest, but I want to speak to the fact that this investigation will be based on the facts that the investigators learn, and the results of the investigation will be driven by those facts and nothing less and nothing more.

Q But the President said that they would pay, so you guys are not on the same page on that?

SECRETARY MAYORKAS: I think the President was speaking in terms of the horror that he observed from seeing the images and what they suggest.

MS. PSAKI: Phil.

SECRETARY MAYORKAS: That investigation will have integrity, I can assure you of that.

Q Thank you, Mr. Secretary. I understand you guys have been saying since January 20th you inherited a broken system; there's a lot of work to be done here. But you have thousands of people living in squalid

conditions, limited opportunities to go through asylum processes here. Advocates have been warning about situations like this for months now. How much responsibility do you, does the administration take for these situations continuing to, kind of, pop up in various places?

SECRETARY MAYORKAS: So if you're -- if you're addressing the situation in Del Rio, I will tell you that it is unprecedented for us to see that number of people arrive in one discrete point along the border in such a compacted period of time. That is unprecedented.

We have the Chief of the Border Patrol, Raul Ortiz, is, I think, a 30-year veteran and he has not seen that before. And what we do when we see something that is unprecedented is we respond, and respond we did.

MS. PSAKI: Steve.

Q Some Democrats have wanted you to be more lenient on the asylum claims because of the earthquake that Haiti went through. Have you considered that at all, sir?

SECRETARY MAYORKAS: So, let me -- let me speak to that. We studied the conditions in Haiti a number of months ago, as is our legal obligation to do so. And based on the country conditions that we observed and studied, what we did is we designated Haiti for Temporary Protected Status for those Haitian nationals resident in the United States who were here prior to July 29th. And we were mindful of the assassination that occurred, and we were unsure of the results of that assassination in terms of the stability of the political order.

Once a new leader took office and things seemed to settle down, we determined that the July 29th date was equitable to address the humanitarian relief of Haitian nationals already resident in the United States.

We have continued to study the conditions in Haiti, and we have in fact determined, despite the tragic and devastating earthquake, that Haiti is in fact capable of receiving individuals. And we are working with Haiti and with humanitarian relief agencies to ensure that their return is as safe and humanely accomplished as possible.

I was around -- I was at U.S. Citizenship and Immigration Services on January 10, 2010, the date of the last earthquake in Haiti, and that was distinct from the earthquake that devastated people more recently. That had far greater geographic repercussions than this one now.

This one, as devastating and tragic as it is, was more geographically limited, and we made a determination based on the legal standards and the facts that, in fact, individuals could be returned to the country as a whole.

MS. PSAKI: Peter.

Q Thank you very much. Just to go back, please, to the images of these mounted Border Patrol officers: You said on Saturday -- or rather, on the 20th, "To ensure control of the horse, long reins are used." The person who took these photos of the Border Patrol agents says, "I've never seen them whip anyone." So, why is the President out there today talking about people being "strapped"?

SECRETARY MAYORKAS: So let me -- let me correct the statements in your question, if I may. It was --

Q They're direct quotes.

SECRETARY MAYORKAS: No, no -- if I may. It was on Friday when I was -- actually, it was on Monday, I believe, when I was in Del Rio on the ground and I made the statements without having seen the images. I saw the images on the flight back, and I made the statement that I did with respect to what those images suggested.

There -- the horses have long reins, and the image in the photograph that we all saw, and that horrified the nation, raised serious questions about what it -- let me finish -- about what occurred and of -- as I stated quite clearly, it conjured up images of what has occurred in the past.

Let me -- let me finish.

There's also a question of how one uses the horse and how one interacts with individuals with the horse. And so I'm going to let the investigation run its course. I'm not going to interfere with that investigation. The facts will be determined by the investigators, and then the results will be driven by the facts that are determined.

Q And just to follow up, please -- before the facts are in, is it helpful to your investigation for the President of the United States to use inflammatory language, like people being "strapped"?

SECRETARY MAYORKAS: Let me just be very clear and repeat what I've said: I am not concerned with respect to the integrity of the investigation. We know how to conduct an investigation with integrity. I served as -- 12 years as a federal prosecutor. There were a great deal of comments in many of the cases that I handled in the public sphere, and I know how to maintain the integrity of an investigation, and this investigation will have integrity.

MS. PSAKI: Just a few more. Peter, go ahead.

Q Mr. Secretary, thank you. Are Title 42 expulsions, sending Haitians back to danger in Haiti, immoral? Yes or no?

SECRETARY MAYORKAS: No, they are not. They are driven by a public health imperative.

Q I understand the public health imperative --

SECRETARY MAYORKAS: But let me --

Q -- but are they immoral?

SECRETARY MAYORKAS: But let me -- let me explain, because -- let me be quite clear: We do not conduct ourselves in an immoral way. We do not conduct ourselves in an unethical way. In fact -- in fact, we are restoring people by reason of the immorality of the past administration. We are reuniting families that were separated.

Let me explain something -- the reality of the situation -- because we're dealing with a great number of individuals who are encountered at the border in a congregate setting and placed in Customs and

Border Protection -- you know, Border Patrol stations. And that can cause the significant spread of a pandemic.

And it is in light of the operational realities that the Centers for Disease Control made a determination in its public health expertise that Title 42 authority must be exercised. It is a statutory authority. And they made the determination that the public health of the migrants themselves, our personnel, local communities, and the American public require it.

And that is why we are exercising that authority to serve the public health. Over 600,000 Americans have died. More than 40 U.S. Customs and Border Protection personnel have died. Many migrants have gotten sick.

We are doing this out of a public health need. It is not an immigration policy. It is not an immigration policy that we would embrace.

Q With all due respect, sir --

MS. PSAKI: Okay, Rachel. Last one.

Q -- your statement acknowledges the treatment --

MS. PSAKI: Go ahead, Rachel.

Q -- of Haitian immigrants.

Q Secretary, thank you.

MS. PSAKI: Go ahead. Go ahead. We've all been civil here. Let's have Rachel -- let Rachel have her question.

Q The congregation under the bridge -- the congregating there -- just mentioning COVID -- what is the situation there? I know that the crowd has been dispersed. Do we know who has tested positive? If people got sick, any kind of symptoms among this group of 15,000, you said?

SECRETARY MAYORKAS: Yeah, so, we did not -- we do not te- -- we did not test that population of individuals. We do not know -- I do not know, I should say, if I may be perfectly accurate -- I do not know whether anyone was sick with COVID.

We certainly had some individuals get sick, not specifically with COVID, to my knowledge, and we addressed their illnesses. In fact, we set up medical tents that had a certain standard of ability to address medical needs.

It is -- it was ho- -- it's hot in Del Rio, Texas. We had cases of dehydration. We had other situations. And that is precisely why we surged one hundred -- approximately 150 medical professionals to address the medical needs of that population. That is why we set up medical facilities with the appropriate equipment to address their medical needs.

And I must say, what I saw of the Border Patrol and other personnel was, quite frankly, heroic. They took -- this is not their customary obligations, and yet they took great pride in addressing the needs of the people.

Q With all due respect, sir, your statement -- that "this is not who we are" -- belies the actual treatment of Haitian immigrants not just in this administration, but in administrations of both parties, going back decades. And you seem to be distinguishing between violence and violence. What is the difference between --

SECRETARY MAYORKAS: I'm sorry --

Q -- the type of violence that Haitians are fleeing in Haiti and the type of devastation and -- other devastation that they're fleeing, as compared to other immigrants and asylum seekers?

Democrats left and right, up and down, have been talking about the violence that people have been fleeing in Central America and South America. And the President, even during his campaign, talked about the fact that this created a need to create a pathway and an asylum system. This doesn't seem to be the case when it comes to Haitian immigrants.

SECRETARY MAYORKAS: Oh, if --

Q And, in fact, the images are a true graphic representation of the way Haitian immigrants and immigrants of African descent have been treated, not just by this administration.

MS. PSAKI: I think we have to finish the question so we can answer it.

SECRETARY MAYORKAS: If I may, I would respectfully disagree with you. And let me -- let me say --

Q I happen to be an immigrant and have been on the wrong side of the U.S. immigration for the last 20 years, so I have some experience with it.

SECRETARY MAYORKAS: Oh, no, no, no -- I wasn't commenting on your personal experience, sir. And I am an immigrant as well. I wasn't commenting on your personal experience. I was respectfully disagreeing with an assertion that you made, if I may.

Because if --

Q So, what is the difference --

SECRETARY MAYORKAS: -- if -- if I may: An asylum claim is determined based on the facts that are presented in the individual case. In fact, the Title 42 authority has been applied to irregular migration since the very beginning of this administration and before. And it has applied to individuals from Guatemala, Honduras, El Salvador, and other countries.

It has been applied equally, and the exceptions that I cited have been the exceptions that have applied to all. There are three exceptions: the Convention Against Torture; acute vulnerabilities, such as extreme medical needs; and operational capacity. Those are the three exceptions.

Title 42 authority has been applied, irrespective of the country of origin, irrespective of the race of the individual, irrespective of other criteria that don't belong in our adjudicative process and we do not permit in our adjudicative process.

MS. PSAKI: Thank you, Secretary Mayorkas.

Q And one follow-up -- the whipping -- the whips, the horse whips --

SECRETARY MAYORKAS: Sir, that is something -- that is something that horrified us all. And, you know, this morning, I was on radio, and the interviewer said that it was -- it troubled, very profoundly, the Black and the African American community. And I said one thing -- and this should be clear: Those are not the only communities that it horrified. Those are not the only communities that it concerned. Of course, that concern might be most acute, given the history in this country and in other parts of the world. But all of America is horrified to see what those images suggest.

MS. PSAKI: Thank you so much, Secretary Mayorkas. Appreciate your time.

Q One more question.

MS. PSAKI: He'll come back. I promise. I know there's lots of questions, but we have to let him go back to his job.

Q Thank you, Secretary.

SECRETARY MAYORKAS: Thank you all. Thank you.

MS. PSAKI: Thank you so much, Secretary Mayorkas.

Q You're welcome anytime.

MS. PSAKI: You're always invited. Open invitation.

...

Q Thank you. You know, we've talked about the images that these -- that the Al Jazeera footage exposed with respect to the horses that --

MS. PSAKI: Yeah.

Q -- along the border, the pain that that conjures up for African Americans in this country. The President has condemned this, but, you know, the President has also promised African Americans in this country that he had their back.

Al Sharpton has said this week, "We're being stabbed in the back. Mr. President, we need you to stop the stabbing, from Haiti to Harlem." He's talking about the failure of the police reform bill.

What does the President need to do to address this? What does he need to do more for the community? You said this week there's been the engagement with leaders, but does the President need to do more than that? And what should he be doing?

MS. PSAKI: Well, first, I would say, since you referenced police reform, the President is absolutely frustrated that we haven't been able to move forward with police reform. He supported the efforts by negotiators on the Democratic side, on the Republican side, to try to find common ground.

He also was frustrated that they couldn't find -- move -- they weren't able to move forward, despite the fact that there was agreement from even police organizations and others about what -- about what the path forward looked like. So, he's incredibly frustrated.

It requires Congress moving forward in order to have that kind of lasting impact. But the President has also been clear he's going to engage with advocates, engage with members, and also consider options like executive actions -- which is something that we did not act on because we wanted to leave space for these negotiations to continue.

Q But does that make the African American voters feel recognized, that they are being seen, that they're being heard? I mean, bring it down to the laymen level.

MS. PSAKI: You asked me specifically about police reform, so that's why I addressed that specific question.

I would say that the President has been an advocate for civil rights changes, for reforms that are needed, for equity across our system from -- for many, many decades, and that is a central tenet of his presidency. And that is evidenced in a range of executive orders that he signed early on in his presidency; his advocacy for voting rights, for police reform; and certainly the comments and remarks you heard him give this morning.

...

Q Thanks. So, we know that the Vice President has been tasked with addressing the root causes of migration. A Democratic congressman from Texas told CNN yesterday that the Vice President's trip to Mexico and Central America had no impact. So, first, I'm wondering if the administration can just detail some tangible examples of the actions in addressing the root causes of migration that have had a tangible, you know -- an actual impact.

And then, secondly, what specific causes -- root causes is the Vice President currently addressing to help curb Haitian migration from places like Chile and Brazil?

MS. PSAKI: Well, I think, as the Vice President and the President have both conveyed, this is going to be a long-term effort. And what the focus is on is addressing root causes like corruption, like economic circumstances that are impacting people and prompting them to want to come to the United States.

So that requires working with governments both to put in place new migration proceedings and processes, or limitations, sometimes at borders. We've seen some impacts of those over the course of the last several months.

It also includes providing assistance and engaging closely with these leaders on what steps can be taken. And the Vice President has been deeply engaged in this.

But, again, as it relates to Haiti, as it relates to our broken immigration system, the clear step that needs to be taken is an immigration bill needs to pass Congress. It's a broken system -- one that is ineffective; one that is not moral, in many cases, at this point in time. It's long overdue.

There are a lot of Republicans out there giving speeches about how outraged they are about the situation at the border, not many who are putting forward solutions or steps that we could take. So, we're a little tired of the speeches. We'd like to partner on solutions and working together to address this problem that has not been partisan in the past.

...

Q Thanks, Jen. Two questions. The DHS Secretary several times said he didn't want to impair the integrity of the investigation to the Border Patrol agents. He said, "I will not prejudge the facts." Did the President prejudge the facts when he said, "I promise you those people will pay"?

MS. PSAKI: I think what you heard from the President is a very human and visceral response to those images, which I think reflects how a lot of people in the country felt when they saw them.

There is an investigation the Department of Homeland Security is overseeing. That will determine what the personnel decisions may be, any other policy decisions, and that needs to see itself through.

But I think the President wanted to make clear to people who watched those photos, who had understandably emotional responses, that that's not acceptable to him, even while the investigation is being so- -- is being -- is happening and moving forward. That will determine what the consequences will look like.

...

Q Okay. Moving on to the border, following up on a question from earlier in the week: Why hasn't President Biden ever visited the southern border?

MS. PSAKI: What would you like him to do at the southern border? And what impact do you think that would have on the policies?

Q Why doesn't he want to go?

MS. PSAKI: I don't think it's an issue of wanting to go; I think it's an issue of what's most constructive to address what we see as a challenging situation at the border and a broken immigration system.

And his view is: The most constructive role we can play is by helping to push immigration reform forward; helping reform the broken policies of the last several years; and listening to his team of advisors, who have been to the border multiple times, about what the path forward should look like.

Q So why is this the one crisis then that he thinks he can manage better from here without having seen it than going to the southern border and seeing it?

MS. PSAKI: I can assure you the President is well aware of what the challenges are in our broken immigration system, something he watched closely over the last four years.

Okay. Go ahead, Steve.

Q Just to put a fine point on your answer to Karen's question --

MS. PSAKI: Sure.

Q -- because I'm sure that the union officials and lawyers who will be representing these agents are going to --

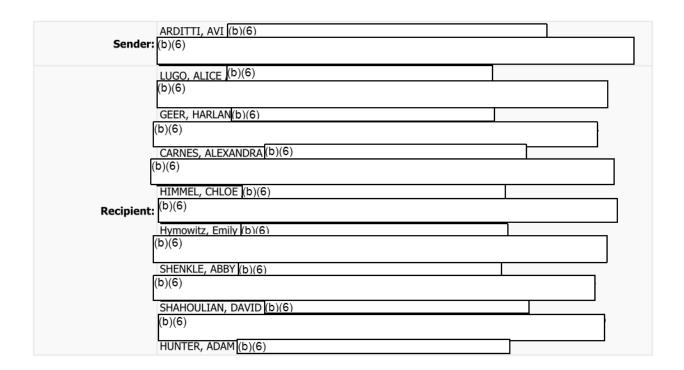
MS. PSAKI: Yeah.

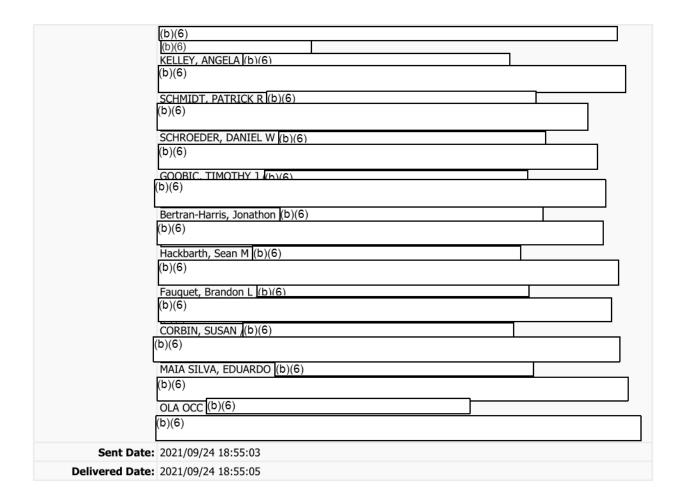
Q -- want to know: Is it your view or the White House's position that what the President said this morning is not legally operative, with respect to consequences, and these people "paying" was simply his personal view and not representative of actions that the government will take?

MS. PSAKI: The President was not prejudging the outcome of an investigation either; the President was responding from his heart and responding to seeing horrific photos that we have seen over the last several days.

Q But he is the head of the executive branch; the Constitution vests him with the authority in Article Two. You're saying that what he said will not necessarily be the outcome?

MS. PSAKI: Again, there's an investigation that's ongoing. I don't know that anyone saw those photos and didn't have a similar reaction to the President's, and that was what it was a reflection of.





# **Significant Correspondence Report**



09.24.21

Control Number	Date Received	То	From	Summary	Counselor	Tasked	Signature Level	Priority Level	Priority Due Date	Interim Required
1221478 21-3704	09.24.21	S1	Sen. Hagerty	Writes to urge that, in the event of a government shutdown, to designate all border security and immigration-enforcement personnel, including CBP Border Patrol and ICE deportation officers, as essential employees who may continue to work.	N/A	СВР	FYI	N/A	N/A	No
1221511 21-3992	09.24.21	POTUS	Judith Browne Dianis Advancement Project	Writes to offer the Administration counsel on immigration practices and policies that would benefit migrants fleeing to the U.S.	N/A	СВР	FYI	N/A	N/A	Yes
1221514 21-3993	09.24.21	SI	Multi-State Attorney General's	Writes urging the Administration to be more compassionate in its handling of Haitian refugees at the border.	Immigration Team	PLCY USCIS ICE CBP	OPE	Routine	10/29/2021	No
1221510 21-3706	09.24.21	S1	Sen. Moran	Writes to express my strong concerns with the ongoing and growing humanitarian and national security crisis at our southern border.	Immigration Team	СВР	OLA	Urgent	9/29/2021	Yes

RUSSELL SENATE OFFICE BUILDING SUITE B11 WASHINGTON, DC 20510-4209 (202) 224-4944

## United States Senate

WASHINGTON, DC 20510

RECEIVED

By ESEC at 9:57 am, Sep 24, 2021

September 23, 2021

President Joseph R. Biden, Jr. The White House 1600 Pennsylvania Avenue NW Washington, DC 20500

Dear Mr. President:

Given the continuing crisis at our southern border and resulting influx of migrants into the United States, I am writing to urge that, in the event of a government shutdown, you designate all border-security and immigration-enforcement personnel, including Customs and Border Protection's (CBP) Border Patrol and Immigration and Customs Enforcement's (ICE) deportation officers, as essential employees who may continue to work.

As you know, current government funding expires on October 1, 2021, and your Administration is preparing for that contingency. Despite the course that Democrat-controlled Washington is on, there is a clear path to avoiding such a shutdown: your urging that Congress should send a clean continuing resolution to your desk. This would likely obtain wide bipartisan support. Unfortunately, Democrat leadership in Congress is insisting on wedging an unrelated debt limit vote into the government-funding bill.

In the event of a lapse in appropriations, CBP and ICE employees who are funded through such appropriations would be furloughed unless designated as essential. Holding these law enforcement functions hostage during a border crisis would be totally irresponsible.

In the last week, Americans have watched 15,000 migrants gather at the border. Reports now indicate that many have been released into the United States, despite Secretary Mayorkas's claim that the border is closed. Your Administration's response has been to fan the flames of a made-up controversy about horse reins, which were being used by Border Patrol agents on horseback to protect themselves. Indeed, the president of an organization representing Border Patrol agents commented: "There are very few things that will boil my blood as bad as the White House directly coming out and condemning an action before they know what happened."

Given that this recent political posturing has undermined our law enforcement agents on the ground and our deterrent effect across our borders, a clear public statement is needed to demonstrate to the American people that immigration law enforcement personnel will have your support and be considered essential during any government shutdown, instead of being demonized. Our national security depends on it.

Thank you, and I look forward to your response.

Sincerely.

Bill Hagerty

United States Senator

cc: The Honorable Alejandro Mayorkas

Secretary, Department of Homeland Security

The Honorable Shalanda Young Acting Director, Office of Management and Budget

The Honorable Kiran Ahuja Director, Office of Personnel Management President Joe Biden The White House 1600 Pennsylvania Ave. NW Washington, DC 20500

RECEIVED

By ESEC at 12:16 pm, Sep 24, 2021

September 21, 2021

Dear President Biden,

As leaders of civil rights and human rights organizations, we write at an inflection point for your Administration's commitment to a humane and just immigration policy. In recent weeks your Administration has violated asylum rights and refugee laws enacted by Congress and embraced policies that inflict cruelty on Black, Brown and Indigenous immigrant communities. We fear that commitments made on the campaign trail—to uphold the United States' domestic and international legal obligation to asylum, to end privatized detention, and to disentangle federal immigration enforcement from local law enforcement—are being shredded before our eyes.

The Trump Administration attempted to close the southern border to those fleeing persecution. It instituted a policy of summary expulsions and ignored or violated the right to seek asylum under United States and international law. Instead of disavowing those policies and that approach, your Administration is aggressively defending the expulsion policy in court, even after a federal district court ruled it unlawful. Responsibility for the suffering and deaths resulting from summary expulsions and removals now falls squarely on your Administration and will be part of your enduring legacy.

Your Administration has committed to advancing racial equity in all parts of government. This commitment is belied by the Department of Homeland Security's actions on the southern border, where mass deportation and expulsion flights are returning Haitian migrants, without even a screening for asylum eligibility, to a country reeling from a devastating earthquake and presidential assassination. As recently as May, your Administration recognized the "political crisis and human rights abuses" that render returns to Haiti unsafe. These flights confirm our fears that your Administration, like its predecessors, is utilizing harsh and illegal policies to attempt to deter people, particularly Black migrants, from seeking refuge at the border. Your Administration has promised to uphold tenets of racial equity, but is unleashing immigration policies infused with anti-Black racism.

Your Administration continues to put incarceration at the center of its approach to immigration processing and management. Private prison companies losing contracts with the Bureau of Prisons or U.S. Marshals Service see Immigration and Customs Enforcement

(ICE) as an eager contracting partner. Those detained in ICE's sprawling web of jails and prisons endure sexual abuse, homophobic and transphobic abuse and harassment, and medical negligence. Their detention is motivated by financial incentives and political calculations, rather than any legitimate or evidence-based purpose.

We continue to present your Administration with our recommendations for policies that reimagine the current immigration system. Your Administration must restore asylum access at ports of entry, rescind the Centers for Disease Control and Prevention's expulsion order, and issue a new termination memo for the Migrant Protection Protocols. Deportation flights to Haiti must stop, and those seeking safety at our borders must be granted their legally assured chance to seek asylum. Your Administration must end its reliance on incarceration for immigration processing, and instead commit to working with community-based legal and social service providers. At the highest levels of government, policymaking and rhetoric must reject false narratives of public safety and public health that demonize immigrants. Your Administration stands at a precipice. We urge you to choose human rights over political demagoguery and fear.

#### Sincerely,

Judith Browne Dianis, Executive Director, Advancement Project

Adoubou Traore, Executive Director, African Advocacy Network

Anthony Romero, Executive Director, American Civil Liberties Union

Benjamin Johnson, Executive Director, American Immigration Lawyers Association and American Immigration Council (Interim)

Nana Gyamfi, Executive Director, Black Alliance for Just Immigration and President, National Conference of Black Lawyers

Carl Hamad-Lipscombe, Executive Director, Brooklyn Community Bail Fund

Vincent Warren, Executive Director, Center for Constitutional Rights

Karen Musalo, Director, Center for Gender and Refugee Studies

Angelica Salas, Executive Director, Coalition for Humane Immigrant Rights

Lorella Praeli, Co-President, Community Change Action

Dorian Warren, Co-President, Community Change Action

Peter Dross, Interim Executive Director, Center for Victims of Torture

Silky Shah, Executive Director, Detention Watch Network

Laura Valdez, Executive Director, Dolores Street Community Services

Guerline Jozef, Executive Director, Haitian Bridge Alliance

Mark Hetfield, President and Chief Executive Officer, HIAS

Michael Breen, President and Chief Executive Officer, Human Rights First

Kenneth Roth, Executive Director, Human Rights Watch

Jojo Annobil, Executive Director, Immigrant Justice Corps

Eric Cohen, Executive Director, Immigrant Legal Resource Center

Franciscka Lucien, Executive Director, Institute for Justice and Democracy in Haiti

Becca Heller, Executive Director, International Refugee Assistance Project

Wade Henderson, Interim President and CEO, The Leadership Conference on Civil and Human Rights

Ken Whittaker, Executive Director, Michigan United

Sherrilyn Ifill, President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc. (LDF)

Mary Meg McCarthy, Executive Director, National Immigrant Justice Center

Marielena Hincapie, Executive Director, National Immigration Law Center

Sirine Shebaya, Executive Director, National Immigration Project of the National Lawyers Guild

Nicole Melaku, Executive Director, National Partnership for New Americans

Murad Awawdeh, Executive Director, New York Immigration Coalition

Laura Martin, Executive Director, Progressive Leadership Alliance of Nevada

John Slocum, Interim Executive Director, Refugee Council USA

Vicki B. Gaubeca, Director, Southern Border Communities Coalition

Margaret Huang, Executive Director, Southern Poverty Law Center

Patrice Lawrence, Co-Director, UndocuBlack Network

Greisa Martinez, Executive Director, United We Dream

Sushma Raghavan, Interim Executive Director, Unite Oregon

Nicholas Turner, President, Vera Institute of Justice

Sarah Costa, Executive Director, Women's Refugee Commission



OFFICE OF THE ATTORNEY GENERAL STATE OF ILLINOIS



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OFFICE OF THE
ATTORNEY
GENERAL
STATE OF NEVADA



OFFICE OF THE ATTORNEY GENERAL STATE OF NEW YORK



OFFICE OF THI ATTORNEY GENERAL U.S. VIRGIN ISLANDS

September 23, 2021

#### Via E-mail and U.S. Mail

President Joseph Biden The White House 1600 Pennsylvania Avenue, N.W. Washington, DC 20500

The Honorable Alejandro Mayorkas Secretary of Homeland Security Washington, DC 20528

Re: Haitian Refugees

RECEIVED

By ESEC at 2:38 pm, Sep 24, 2021

Dear President Biden and Secretary Mayorkas:

We, the Attorneys General of Illinois, the District of Columbia, Nevada, New York, the U.S. Virgin Islands, California, Connecticut, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington write to you concerning the urgent circumstances facing thousands of Haitian migrants currently seeking the humanitarian aid of the United States at our borders. Like many Americans, we were grateful to learn that your administration will investigate the tactics of U.S. immigration officials on horseback who were recently filmed and photographed charging at—and apparently attempting to whip—Haitian migrants as they sought to bring food to their families massed under a bridge in Del Rio, Texas. We trust that this investigation will result in the cessation of these inhumane tactics, which do not reflect the values of our nation and our respective states. Likewise, we commend the

<sup>&</sup>lt;sup>1</sup> See Alexandra Petri, *Homeland Security Investigates Border Patrol's Treatment of Haitian Immigrants*, N.Y. TIMES (Sept. 20, 2021), <a href="https://www.nytimes.com/2021/09/20/us/politics/haitians-border.html">https://www.nytimes.com/2021/09/20/us/politics/haitians-border.html</a>.

administration for its recent decision to greatly increase the number of refugees who will be allowed into the United States in the coming fiscal year.<sup>2</sup>

While we are confident that your administration will address the alarming practices recently used to apprehend Haitian migrants at the border, we remain deeply concerned by the administration's continuation of a summary deportation policy (ostensibly supported by 42 U.S.C. § 265 and related rules) that is sending many Haitians back to a country facing one of the worst series of crises in its history. Haiti is experiencing unprecedented political upheaval from this summer's presidential assassination and is struggling yet again to rebuild after a destabilizing earthquake. These unexpected events have prompted a new influx of Haitian nationals seeking refuge in our country. We understand that the administration must constantly reconsider and formulate responses to a challenging crisis that is unfolding day by day. However, individuals seeking asylum or other humanitarian assistance in our country deserve our respect and compassion, and they should not be treated differently from other migrants based on their country of origin. Haitians deserve the same due process as all others attempting to immigrate or flee to the United States. The circumstances of every Haitian seeking refuge here should be assessed on a case-bycase basis. This individualized evaluation should factor in both the time a person has been away from Haiti and the circumstances he or she would likely face if compelled to return to a nation in the midst of dire humanitarian and governance crises.

We support and encourage the Administration to use the several tools available to address the critical conditions for the Haitians who have sought refuge under the bridge in Del Rio. In immigration matters, the Supreme Court has repeatedly affirmed "the deference traditionally accorded the President in this sphere." For example, the President may set a number of refugees to be admitted to the United States separate from the annual cap after determining that "an unforeseen emergency refugee situation exists," and that admission of those refugees "is justified by grave humanitarian concerns." The administration also could invoke country-specific measures to allow these migrants to legally remain in the United States while conditions in their country of origin are too hazardous for them to safely return. On an individual level, the Attorney General may parole a migrant into the United States if he "determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States."

We also respectfully urge your administration to reconsider relying on 42 U.S.C. § 265 and related rules to justify expelling Haitian nationals to Haiti. As one federal court recently held, citing Title 42 to expel foreign nationals already in the United States on public health grounds defies the language of the statute and overrides clear humanitarian protections for refugees in the law.<sup>7</sup>

<sup>&</sup>lt;sup>2</sup> See Mica Rosenberg & Lisa Lambert, *Biden Administration Seeks to Lift U.S. Refugee Cap to 125,000*, REUTERS (Sept. 20, 2021), <a href="https://reut.rs/3EHHWmG">https://reut.rs/3EHHWmG</a>.

<sup>&</sup>lt;sup>3</sup> Trump v. Hawaii, 138 S. Ct. 2392, 2409 (2018).

<sup>&</sup>lt;sup>4</sup> 8 U.S.C. § 1157(b).

<sup>&</sup>lt;sup>5</sup> See, e.g., 86 FR 41863, Designation of Haiti for Temporary Protected Status (Aug. 3, 2021); 86 FR 9531, Reinstatement of Deferred Enforced Departure and Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians (Feb. 16, 2021). <sup>6</sup> 8 U.S.C. § 1182(d)(5)(B).

<sup>&</sup>lt;sup>7</sup> See Huisha-Huisha v. Mayorkas, Civ. Action No. 21-100, 2021 WL 4206668 (D.D.C. Sept. 16, 2021).

As Attorneys General, we understand the need to respond to an evolving crisis while following the law. We urge the administration to exercise its discretion—discretion that the law expressly provides—to demonstrate compassion and fairness in the treatment of those Haitians seeking refuge in our country.

Respectfully,

KWAME RAOUL Illinois Attorney General

AARON D. FORD

Nevada Attorney General

DENISE N. GEORGE U.S. Virgin Islands Attorney General

WILLIAM TONG Connecticut Attorney General KARL A. RACINE District of Columbia Attorney General

LETITIA A. JAMES
New York Attorney General

ROB BONTA California Attorney General

Tom Thellar

TOM MILLER Iowa Attorney General Janon M. Frey

AARON M. FREY Maine Attorney General

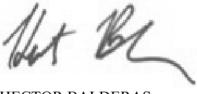


MAURA HEALEY
Massachusetts Attorney General

Dana Wessel

DANA NESSEL Michigan Attorney General





HECTOR BALDERAS New Mexico Attorney General



ELLEN F. ROSENBLUM Oregon Attorney General



PETER NERONHA Rhode Island Attorney General

172J.

THOMAS J. DONOVAN, JR. Vermont Attorney General

Mark R. Henry

MARK R. HERRING Virginia Attorney General



BOB FERGUSON Washington Attorney General

JERRY MORAN KANSAS

521 DIRKSEN SENATE OFFICE BUILDING WASHINGTON, DC 20510-1606 P: (202) 224-6521 F: (202) 228-6966 moran.senate.gov

# United States Senate

COMMITTEES: RANKING MEMBER VETERANS' AFFAIRS

**APPROPRIATIONS** 

COMMERCE, SCIENCE, AND TRANSPORTATION

INDIAN AFFAIRS

BANKING, HOUSING, AND URBAN AFFAIRS

HEALTH, EDUCATION, LABOR, AND PENSIONS

September 24, 2021

The Honorable Alejandro Mayorkas Secretary Department of Homeland Security 2801 Nebraska Ave., NW Washington, DC 20528

RECEIVED By ESEC at 2:59 pm, Sep 24, 2021

I write to express my strong concerns with the ongoing and growing humanitarian and national security crisis at our southern border and to request information about how the Biden administration and the Department of Homeland Security are processing the hundreds of thousands of migrants illegally crossing into the United States.

During your most recent trip to the southern border you said: "If you come to the United States illegally, you will be returned. Your journey will not succeed and you will be endangering your life and your family's lives." You went on to say: "Irregular migration poses a serious security risk to the migrants themselves. Trying to enter the United States illegally is not worth the tragedy, the money or the effort."

However, the actions of the department under your leadership say otherwise. While some illegal migrants are being expelled, many more have and continue to be released into the United States. It was reported in July that nearly 50,000 migrants were released without a court date and given nothing more than a list of ICE offices around the country with instructions to report within 60 days. Unsurprisingly, nearly 87 percent of those individuals did not report as directed. Even those who are given a court date rarely appear and face little or no consequences.

This sends a message that if you make it to the United States you will be allowed to stay without facing repercussions. This encourages families to make the dangerous trek north and entrust their safety to dangerous drug cartels at the risk of being murdered, assaulted or trafficked because the reward is worth the risk. The Haitians at our border and the ones that continue to arrive at the U.S.-Mexico border believed your actions rather than your words. They watched as thousands were allowed stay in the country and gambled that they too would get the same treatment.

Once again, it has been confirmed that individuals have been released into the interior of the country with the same request to report, in direct contradiction to your comments from just days earlier. Even more troubling is your inability or unwillingness to provide the basic information related to these releases. I ask that you provide answers to the following questions by October 1.

### Since February 1, 2021:

- How many individuals have been released with a Notice to Appear or a Notice to Report? (Categorized by NPA or NPR)
- 2. What demographics of individuals are being released with a NPA or NPR?
- 3. How many of the individuals who have been released have appeared in court or reported in the required time?
- 4. How are you keeping track of the individuals that do not appear or report in the required time?
- 5. What recourse have you taken against those who have not appeared or reported in the required time?

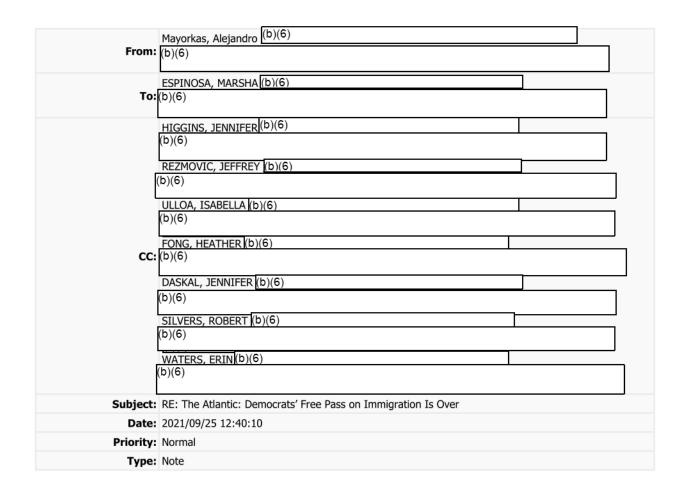
I remain committed to addressing the problems facing our broken immigration system in order to provide an effective and efficient legal pathway for those who wish to share in and contribute to the success of our great nation. However, this cannot be accomplished until we are able to secure our borders. Thank you for your attention to this request, and I look forward to your reply.

Jerry Moran

Sincerely,

Jerry Moran

DHS-001-1770-000145



Thank you, Marsha. This piece is filled with factually incorrect statements. I am not opining on the piece as a whole or its conclusion, only stating that there are significant erroneous statements in it. Ali

### Alejandro N. Mayorkas Secretary

From: ESPINOSA, MARSHA (b)(6	)				
Sent: Saturday, September 25,	2021 12:32 PM				
To: Mayorkas, Alejandro (b)(6)					
Cc: HIGGINS, JENNIFER (b)(6)		REZMOVIC, JEFFREY			
(b)(6)	ULLOA, ISABELLA (b)(6	)	FONG, HEATHER		
(b)(6)	DASKAL, JENNIFER (b)(	6)	SILVERS, ROBERT		
(b)(6)	VATERS, ERIN (b)(6)				
Subject: The Atlantic: Democrats' Free Pass on Immigration Is Over					

This is more of an opinion piece, but it raises some points that could be discussion in tomorrow's interviews. I think her framing of TPS in 2010 is also wrong.

The Atlantic: Democrats' Free Pass on Immigration Is Over (Caitlin Dickerson)

As he extends Trump-era policies, President Biden discovers that many voters are no longer willing to give him the benefit of the doubt.

Throughout the last administration, Department of Homeland Security officials at all levels—from Senate-confirmed power brokers in Washington to rank-and-file agents along the border—often complained that they were facing a double standard: They were doing the same work, using the same methods, as they had under previous presidents, they said, but because their boss was now Donald Trump, the public was quick to assume they were acting out of racism or malice.

At times, of course, Trump's policies did break with those of previous administrations, including the zero-tolerance policy that separated thousands of migrant children from their parents. But in many ways, the DHS officials were right: Stories highlighting conditions and practices that predated the Trump presidency by years or even decades suddenly became front-page news. Reporters had doggedly covered those issues for years, but before Trump was inaugurated, their stories rarely generated any lasting national attention.

Up until recently, the Biden administration seemed to have been banking on the persistence of this double standard, whereby the left-leaning parts of the public assume general goodwill on the part of Democratic politicians and therefore give them a pass. The administration has taken up court battles to protect some of Trump's harshest asylum policies and commenced flying multiple planeloads of migrants back to Haiti. Now-viral images show that, in recent days, Border Patrol agents have been charging at—and in some cases verbally assaulting—Haitian migrants marooned at the Mexican border across from Del Rio, Texas.

But the assumption that these tactics would go unchallenged when deployed by a Democratic administration, as was often the case in the past, appears to have been a serious miscalculation. The spotlight that Trump shined on the southern border for four years is still plugged in. The public is still paying attention. And images that evoke the era of slavery—with fair-skinned men on horseback rushing Black migrants, whiplike reins flailing behind them—have added to a long-simmering push from the left to consider immigration policy not simply in terms of economics or national security, but also in terms of race.

Key allies of President Joe Biden are responding in ways that suggest the era of presumed goodwill may be over. The recent treatment of Haitians "turns your stomach," Senator Chuck Schumer, the Democratic majority leader, said this week in a speech on the Senate floor. "We cannot continue these hateful and xenophobic Trump policies that disregard our refugee laws." Members of the Congressional Black Caucus were whisked to the White House for a meeting this week, and Al Sharpton, who traveled to the border recently, told The Washington Post that, like thus-far-unsuccessful efforts toward police reform, the treatment of Haitian migrants was an example of how Biden was failing Black Americans. Biden "said on election night: Black America, you had my back, I'll have yours," Sharpton said. "Well, we're being stabbed in the back, Mr. President. We need you to stop the stabbing—from Haiti to Harlem."

Belatedly realizing that the political climate seems to have changed, the Biden administration is now scrambling to do damage control. Vice President Kamala Harris called the images from Del Rio "deeply troubling." Homeland Security Secretary Alejandro Mayorkas said he was "horrified," and he suspended horse patrols there. The president himself said on Tuesday that the encounters were "dangerous" and

"wrong," and that "those people will pay." All of this seems slightly disingenuous: As the administration well knows, Border Patrol agents have been policing on horseback for more than 100 years. And in this case, they were doing so under orders from their supervisors, who serve at the pleasure of the president. The scapegoating of rank-and-file agents will likely alienate a workforce that feels it was ordered to show force and then hung out to dry. Putting the focus on the horseback patrols also draws attention away from a larger issue: The administration has taken the legally dubious position of blocking most Haitian migrants from requesting asylum—and in this case, pushing them back onto the Mexican side of a dangerous river from which border agents often have to save people from drowning.

These events have stoked a broader conversation about race, not only because of the specifics of the encounters in Del Rio, but because of the way our current system is set up. One would be hard-pressed to imagine a scenario in which, following a coup or an earthquake in France, a large crowd of Parisians would show up in Matamoros, Mexico, and face the same treatment as the Haitians—because they would not be required to present themselves at the border in the first place. People from wealthy Western countries don't need visas to come to the United States. For a few hundred dollars, they can simply hop on planes and enter the U.S. as tourists. Then, at some point on their "vacation," they can show up at a government office and request asylum as part of a non-adversarial administrative process. Or they can simply stay in the U.S. illegally without seeking permission, as thousands of Western Europeans and Canadians do each year.

That experience is wholly unlike what an impoverished Haitian or Central American seeking asylum faces. Without a right to counsel, they must argue their case for safe haven in court, against a federal prosecutor whose job is to try to deport them and a judge who, like the prosecutor, works for the attorney general. Some of the asylum seekers are jailed during this process. Of those who are released, some choose to abandon the process and decide to continue living here illegally. But that's only if they make it to the United States in the first place. Without access to tourist visas, the only way for poor people from poor countries to request asylum is to pay smugglers thousands of dollars, many of them using their life savings or going into debt, and hope that they survive the journey.

It is an irony worth noting that this flare-up along the border is occurring during a significant labor shortage. Despite our reflex to categorize migrants like the Haitians stuck in Texas as people in need of either safety or jobs, most want both. More specifically: Not everyone who comes to the United States for a job needs humanitarian protection, but everyone who comes for humanitarian protection needs a job. Yet our laws are so outdated and our elected officials so dependent on divisive talking points that we can't figure out a lawful way to solve a problem that should be quite fixable.

The U.S. has a long history of singling out Haitians for exclusion. Throughout the Cold War, we welcomed hundreds of thousands of people fleeing communism in places such as Hungary, Yugoslavia, Poland, and China. But Haitians—who hailed from the poorest country in the Western Hemisphere, which at the time was run by a pair of brutally violent, successive, father-and-son dictators—were for the most part denied such invitations. In 1981, President Ronald Reagan signed an agreement with the younger dictator, Jean Claude "Baby Doc" Duvalier, giving the U.S. Coast Guard permission to board Haitian boats at random and question passengers in order to head off any approach of the United States. As Haiti deteriorated further amid a coup in 1991 that involved "disappearances, torture, rape and massacres," according to the scholar A. Naomi Paik, President George H. W. Bush moved to interdict refugees who braved the Atlantic on rickety rafts, sending them to other impoverished parts of the Caribbean. Those countries—Belize, Honduras, Trinidad and Tobago—quickly became overwhelmed. Instead of relenting at that point, the Bush administration opened a camp in Guantánamo Bay to

temporarily house Haitian asylum seekers. About 10,000 of them were paroled into the United States after passing an initial screening, but then, according to a Congressional Research Service report, "President Bush ordered the Coast Guard to intercept all Haitians in boats and immediately return them without interviews to determine whether they were at risk of persecution."

The targeting of Haitians for unusual stringency continued into the Clinton era. In 1997, Congress excluded Haitians from a bill to help Eastern Europeans and Central Americans who had been boxed out of asylum protections based on technicalities. (This prompted passage of the pointedly titled Haitian Refugee Immigration Fairness Act the next year.) And in 2002, President George W. Bush's Justice Department acknowledged that, without announcing a formal policy change, it had instructed regional offices in South Florida to change their parole criteria for Haitians specifically, the congressional report says. This quiet change required that Haitians remain jailed after they had successfully passed initial asylum screenings—even though other groups of migrants were freed after clearing that hurdle.

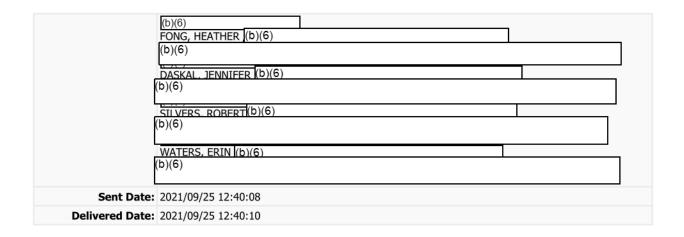
Presidents, both Democratic and Republican, have briefly enacted policies acknowledging that Haitians qualify for asylum or other forms of protection, only to revoke them soon after—sometimes within a few weeks—because too many Haitians were seen to be taking advantage of them. This whiplash has at times felt arbitrary or even cruel. For instance, after the 2010 earthquake that killed a quarter of a million people and nearly leveled Haiti's capital, tens of thousands of Haitians were granted Temporary Protected Status, allowing them to live and work in the U.S. legally. Recent reporting suggests that most of the people who are now stalled at the American border also fled their country after the 2010 earthquake but stopped first in South America. They simply didn't get here in time before the door slammed shut again.

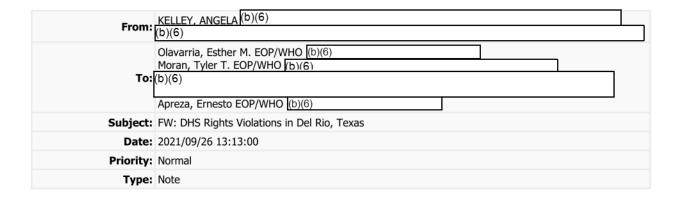
The images captured by journalists at the border this week carry the weight of history. One shows a toddler with braided hair sitting on an adult male's shoulders, its tiny arms crossed and its face scrunched with tears. The man grips the child fiercely as he wades through the neck-high waters of the Rio Grande, in which countless migrants have drowned. His face is set with the determination necessary to survive a system that was not created to help you.

The broader pressure that President Biden is facing to reckon with the racial overtones of America's immigration policy may require an acknowledgment of that history, and of the searing pain this moment has caused for many Black and brown immigrants, their children, and their grandchildren. These photos from Del Rio haven't cut fresh wounds. They've reopened old ones.

#### ###

	Mayorkas, Alejandro (b)(6)	
Sender:	(b)(6)	
	ESPINOSA, MARSHA (b)(6)	
	(b)(6)	
	HIGGINS, JENNIFER (b)(6)	
Recipient:	(b)(6)	
	REZMOVIC, JEFFREY (b)(6)	
	(b)(6)	
	ULLOA, ISABELLA (b)(6)	
	(b)(6)	





Hello all.

Just wanted to be sure you saw this complaint and related press. Please share as you think is appropriate.

Best,

Angie

https://thegrio.com/2021/09/25/biden-complaint-black-immigration-groups-haitian-migrants/

Angela Maria Kelley Senior Immigration Counselor Office of the Secretary Department of Homeland Security

From: CULLITON-GONZALEZ, KATHERINE (b)(6)

Sent: Sunday, September 26, 2021 9:56 AM

To: KELLEY, ANGELA (b)(6)

Subject: FW: DHS Rights Violations in Del Rio, Texas

Hi Angie, here is the complaint and we are working on setting up a meeting for next week. Personal contacts are also reaching out to me from the groups and I am trying to set it up for tomorrow afternoon.

We also are processing the complaint per our usual protocol. This is one of various complaints we have received on these matters. The OIG has the right of first refusal. We have two opened that the OIG has declined and two more that we have sent to the OIG and as far as I know we have not heard back yet on those two. We also sent staff to Del Rio last week.

Please let me know if you need any further information.

Best, K.

From: Chris Rickerd (b)(6)		
Sent: Friday, September 24, 2021 1:17 PM		
To: CRCLCompliance (b)(6)		
Cc: Karen Tumlin (b)(6)	Cristina Velez (b)(6)	Katrina
Bleckley (b)(6)		
Subject: DHS Rights Violations in Del Rio, Texas		

**CAUTION**: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

## Dear Officer Culliton-González:

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We would appreciate acknowledgement of receipt and an opportunity to discuss with your staff at the earliest opportunity.

## Thank you,

Haitian Bridge Alliance The UndocuBlack Network Black Alliance for Just Immigration (BAJI) African Communities Together

Al Otro Lado
Aldea - The People's Justice Center
American Immigration Lawyers Association
Americans for Immigrant Justice
Amnesty International USA
Asylum Seeker Advocacy Project (ASAP)
ASISTA
Bellevue Program for Survivors of Torture
Black LGBTQIA+ Migrant Project (BLMP)
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Florence Immigrant & Refugee Rights Project

Global Justice Clinic, Washington Square Legal Services Harvard Immigration and Refugee Clinical Program

HIAS

**Human Rights First** 

**Human Rights Watch** 

Immigrant Defenders Law Center

Institute for Justice and Democracy in Haiti

International Mayan League

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Mississippi Center for Justice

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Revolve Impact

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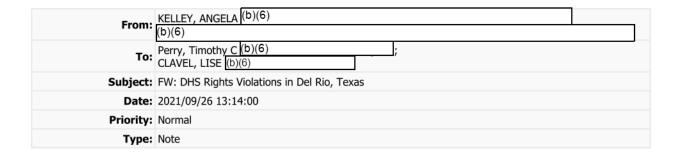
Transgender Law Center

U.S. Committee for Refugees and Immigrants

Witness at the Border

Women's Refugee Commission

Sandarı	KELLEY, ANGELA(b)(6)
Sender	(b)(6)
	Olavarria, Esther M. EOP/WHO (b)(6)
	Moran, Tyler T. EOP/WHO(b)(6)
Recipient:	(b)(6)
	Aprezza Ernacta EODANHO (b)/6\
	Apreza, Ernesto EOP/WHO (b)(6)
Sent Date:	2021/09/26 13:13:04
Delivered Date:	2021/09/26 13:13:00



Tim and Lise,

FYI - Just wanted to be sure you saw this complaint and related press.

Best, Angie

https://thegrio.com/2021/09/25/biden-complaint-black-immigration-groups-haitian-migrants/

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U.S. Committee for Refugees and Immigrants

Witness at the Border

Women's Refugee Commission

| KELLEY, ANGELA (b)(6) | (b)(6) | Perry, Timothy C (b)(6) | CLAVEL, LISE (b)(6) | CLAVE

**Delivered Date:** 2021/09/26 13:14:00

Sent Date: 2021/09/26 13:14:41









September 24, 2021

Katherine Culliton-González
Officer
U.S. Department of Homeland Security
Office for Civil Rights and Civil Liberties
Compliance Branch, Mail Stop #0190
2707 Martin Luther King Jr. Avenue SE
Washington, D.C. 20528-0190

(b)(6)

VIA ELECTRONIC MAIL

Re: DHS Rights Violations in Del Rio, Texas

Dear Officer Culliton-González:

We are writing to file a formal complaint about operations of the U.S. Department of Homeland Security (DHS) and the conduct of DHS's officers and agents in and around Del Rio, Texas. We are aware that Customs and Border Protection's (CBP) Office of Professional Responsibility (OPR) and DHS's Office of Inspector General (OIG) are narrowly investigating Border Patrol's recent violence toward Haitian migrants, including CBP officers on horseback using whip-like reins as weapons against migrants. This complaint extends more broadly than the scope of those investigations, however.

As described below, this complaint complements the pending investigations and covers a range of violations committed in connection with CBP's grotesque treatment of migrants. The clear violations of primarily Haitian migrants' civil, legal, and human rights and dignity necessitate immediate involvement of the

Office for Civil Rights and Civil Liberties (CRCL), including urgent steps needed to ensure the protection of victims and witnesses, and preservation of their testimony.

We request, in filing this complaint, an immediate dialogue with CRCL staff about a variety of serious violations of migrants' rights documented by advocates and attorneys on the ground in Del Rio with whom our organizations have been closely in touch. These reported violations include:

- denial of the statutory and international law rights to apply for asylum, and violation of the *non-refoulement* principle;
- a complete absence of fear-based screening, including for affirmative Convention Against Torture claims as required even under Title 42 restrictions;
- lack of interpreters for communication with DHS officials, including those necessary to guard against (further) violations of *non-refoulement*;
- denial of access to attorneys and legal workers necessary to ensure migrants know their rights and are not removed or expelled in violation of law and that witnesses are identified;
- substandard conditions of nourishment and sanitation in punishing heat;
- verbal abuse from DHS guards and CBP officers/agents;
- physical intimidation from CBP officers/agents;
- physical violence, including what appear to be assaults, against migrants by CBP officers/agents;
- misleading statements made by DHS officers to migrants that they were being flown to other locations within the United States for processing when, in reality, they were being expelled to countries of origin, including instances involving a serious risk that torture will follow;
- inadequate medical care; and
- content-based access restrictions on media outlets covering the situation at Del Rio.

In addition to conducting those investigations, we implore your office to act with urgency to ensure that <u>victims and witnesses of CBP misconduct and their families are not expelled, deported, or returned to Haiti, Mexico, or any third</u>

<u>countries</u>, and are permitted <u>immediate access to counsel</u> to understand their rights, including eligibility for U and T visas, and to assist in the investigations that have already commenced as well as that which we are requesting your office undertake.

The protection of crime victims and witnesses from immigration enforcement has long been a priority guiding the use of prosecutorial discretion (including the decisions to detain or remove). In a 2011 directive issued by then-director John Morton, ICE officials were instructed to "minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice." These include people who are pursuing legitimate complaints of civil rights violations, such as those affected by the egregious violence of CBP in Del Rio, and the actions of ICE and DHS to send potential witnesses and victims back to Haiti and third countries where they will experience further harm, poverty, and violence, and be unable to participate in the investigations of harm against them at Del Rio.

Moreover, by conducting immediate expulsions and removals, and engaging in the offenses and rights violations detailed here, DHS has failed to comply with the victim-centered approach embraced by the Biden administration,<sup>2</sup> and the recent ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Aug. 10, 2021). The directive instructs ICE to withhold civil immigration enforcement action against victims or witnesses participating in criminal investigations.<sup>3</sup> (§2.2). The overarching justification for taking such an approach is that "[w]hen victims have access to humanitarian protection, regardless

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<sup>&</sup>lt;sup>1</sup> ICE Directive No. 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011). , <a href="https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf">https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf</a>
<sup>2</sup> On July 30, 2021, ICE Acting Director Tae Johnson issued a statement affirming ICE's "duty to protect and assist

<sup>&</sup>lt;sup>2</sup> On July 30, 2021, ICE Acting Director Tae Johnson issued a statement affirming ICE's "duty to protect and assist victims of crime," noting that "[t]his is true regardless of whether victims are noncitizens encountered through civil immigration enforcement activities or victims of crimes that are directly under ICE's jurisdiction." *Statement from Acting ICE Director Tae D. Johnson on the agency's victim-centered approach*, <a href="https://www.ice.gov/statements/victim-centered-approach">https://www.ice.gov/statements/victim-centered-approach</a>.

<sup>&</sup>lt;sup>3</sup> ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Aug. 10, 2021), (ICE Victims Directive) § 2.2, <a href="https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf">https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf</a>. This section states: "Assisting law enforcement partners. Absent exceptional circumstances, during the pendency of any known criminal investigation or prosecution, ICE will not take civil immigration enforcement action against victims and witnesses without approval from Headquarters Responsible Officials and may, where applicable and appropriate, issue deferred action or a stay of removal to victims and witnesses. Where available information indicates a noncitizen may be a noncitizen crime victim or witness, ICE should identify victim status as soon as practicable when victim status is unknown or unclear." Exceptional circumstances are defined by the directive at section 3.4 as national security concerns or where a noncitizen poses an articulable risk of death, violence, or physical harm to any person.

of their immigration status, and can feel safe in coming forward, it strengthens the ability of local, state, and federal law enforcement agencies, including ICE, to detect, investigate, and prosecute crimes." (§1). For the principles espoused by the Biden administration to be honored with integrity, it is crucial that they be applied to victims and witnesses of offenses committed by DHS personnel.

We believe it is probable that offenses qualifying for protection under this directive were committed by CBP personnel at the Del Rio site where mostly Haitian migrants converged, and by ICE in the expulsions that followed.<sup>4</sup> Accordingly, DHS should take steps to comply with the directive and employ discretion in the application of enforcement mechanisms<sup>5</sup> to the affected population, which includes all those present at the Del Rio site when these events occurred. In the meantime CBP and ICE should halt all further expulsion flights, and conduct orderly processing and parole of all migrants from the Del Rio site to safe locations (in communities and outside of detention) in the United States, where further investigations can be conducted, and the requisite immigration benefits and community support provided.

The disparate treatment faced by Black migrants, including the aforementioned violence, abuse, and denials of rights, is not only deeply concerning, but it is also unlawful. We urge your office to act with dispatch to address the violations and uphold applicable law and policy. We are ready at any time to speak with CRCL and provide evidence and context for these claims. Please contact us on Friday, September 24, 2021 to acknowledge receipt of this complaint and discuss next steps.

Haitian Bridge Alliance The UndocuBlack Network Black Alliance for Just Immigration (BAJI) African Communities Together

4

<sup>&</sup>lt;sup>4</sup> INA §101(a)(15)(U)(iii); 8 U.S.C. §1101(a)(15)(U)(iii) (listing qualifying crimes including felonious assault, obstruction of justice, witness tampering, unlawful criminal restraint, false imprisonment, and attempts to commit such offenses, as well as any similar offenses).

<sup>&</sup>lt;sup>5</sup> Section 3.2 of the ICE Victims Directive provides a non-exhaustive list of enforcement actions that may be considered, including issuing, filing, or canceling a Notice to Appear; detaining or releasing someone from custody; granting deferred action or parole; and executing a final order of removal.

Al Otro Lado

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American Immigration Lawyers Association

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## CC:

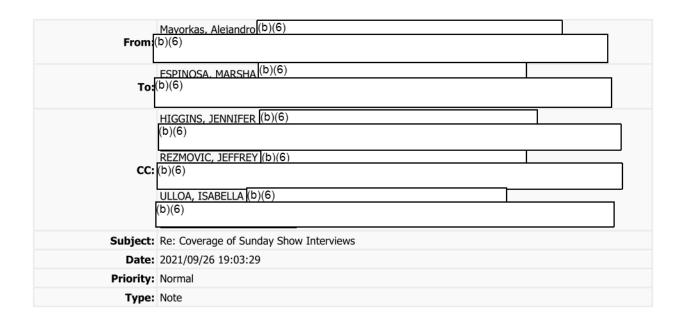
Hon. Alejandro N. Mayorkas, Secretary, U.S. Department of Homeland Security

Hon. Antony Blinken, Secretary, U.S. Department of State

Hon. Merrick B. Garland, Attorney General, U.S. Department of Justice

Amb. Susan Rice, Domestic Policy Council

Mr. Jake Sullivan, National Security Advisor



Thank you very much, Marsha.

Ali

Alejandro N. Mayorkas

Secretary

From: ESPINOSA, MARSHA (b)(6)

Sent: Sunday, September 26, 2021 5:26:24 PM

To: Mayorkas, Alejandro (b)(6)

Cc: HIGGINS, JENNIFER (b)(6) REZMOVIC, JEFFREY (b)(6)ULLOA, ISABELLA (b)(6)

Subject: Coverage of Sunday Show Interviews

Good afternoon,

Below is initial coverage of interviews today. Transcripts of the interviews are HERE.

Overall, the Secretary defended the Administration's response to what happened in Del Rio following criticism from both sides, particularly the left.

Pieces mostly focused on the number of individuals that have been expelled and the number that are in proceedings. More conservative outlets focused on the latter.

The pieces also touched on S1's comments that surges are not new, we are rebuilding a broken immigration system, and the Department had operated under the laws that are in place. The horse patrol investigation was mentioned in the pieces, but not as prominently as the other topics.

### **Coverage of Secretary Mayorkas's Sunday Show Interviews**

## **Print coverage**

- NBC News: Homeland Chief Mayorkas defends Biden administration over treatment of Haitian migrants
- <u>CNN: Mayorkas: About 4,000 migrants in Del Rio have been expelled under Covid-19 public</u> health rule
- Bloomberg: Mayorkas Says U.S. Won't Protect Southern Border With Wall
- • The Hill: DHS secretary: We are working in a 'completely broken' immigration system
- The Hill: DHS secretary says Haitian migrant crisis is 'nothing new'
- Fox News: Mayorkas says as many as 12K out of 17K migrants have been released into U.S., and 'it could be higher' as DHS
- New York Daily News: Border crisis 'nothing new,' says Homeland Security Secretary Alejandro Mayorkas
- New York Post: Mayorkas admits 12,000 Haitians released in US and more could follow
- Newsweek: DHS Sec. Alejandro Mayorkas Defends Deporting Haitians, Calls Immigration System 'Broken'
- Washington Times: Mayorkas: 12,000 migrants released into U.S. from encampment under Del Rio bridge
- Daily Mail: Mayorkas admits 12,000 illegal Haitians out of 17,000 have been released into the US, and it could go even higher - as he DOWNPLAYS border crisis by saying 'this is nothing new' and 'I wouldn't call it a flood'

# NBC News: Homeland Chief Mayorkas defends Biden administration over treatment of Haitian migrants (Teaganne Finn)

President Joe Biden denounced the officers photographed on horseback, adding on Friday, "There will be consequences."

WASHINGTON — U.S. Homeland Security Secretary Alejandro Mayorkas sought on Sunday to fend off criticism of the Biden administration's handling of the crisis at the border, specifically Haitian migrants who had been encamped underneath a bridge in Del Rio, Texas.

"I'm intensely and immensely proud of the men and women of the U.S. Customs and Border Protection. In fact, in Del Rio, Texas, I saw them act heroically," said Mayorkas on 'Meet the Press' commenting on the efficacy of U.S. Customs and Border Patrol.

Criticism of the administration erupted last week after images began circulating showing an agent on horseback grabbing a migrant as the man tried to cross into the United States from Ciudad Acuña, Mexico, and other video showing agents on horseback chasing the migrants and waving what appeared to be a leather rein or a lariat, lashing it toward them.

Mayorkas said the viral images of mostly Haitians being chased and intimidated by immigration officers on horseback "does not reflect who CBP is, who we are as a department, nor who we are as a country."

The White House said last week the horses will no longer be used by Border Patrol officers in Del Rio, Texas, and an investigation will continue into the incident.

Mayorkas defended the horseback training by CBP officers, saying horse patrol "serves an incredibly important function," but would not comment directly in regards to the viral images.

The Biden administration has been criticized for sending Haitian migrants, many who have been in Central and South American countries for several years, back to Haiti when that country is dealing with a humanitarian crisis following a recent earthquake and a hurricane. The official response led the U.S. special envoy for Haiti, Daniel Foote, to resign last week over what he called the administration's "inhumane" treatment of Haitian migrants.

Mayorkas announced on Friday the Haitian migrants had been removed from underneath the bridge and either deported to Haiti or placed in immigration proceedings.

Of the approximately 15,000 migrants who arrived at the border in recent days, Mayorkas said, 2,000 were returned to Haiti on 17 flights under the policy called Title 42 which was invoked at the start of the Covid-19 pandemic that allows the administration to swiftly expel migrants.

An additional 12,400 will remain in the country and have their asylum cases heard by a judge because of exemptions in that policy, which include those who have an "acute vulnerability," like needing urgent medical care, or because of "operational capacity," Mayorkas previously said.

On Sunday, Mayorkas said 5,000 migrants were still being processed by DHS and defended the potential of thousands of migrants staying in the U.S. beyond a couple of weeks.

"This is nothing new. We've seen this type of irregular migration many, many times throughout the years," said Mayorkas on 'Fox News Sunday.'

When asked why the administration did not build a barrier, such as a wall, to keep migrants out of the U.S., Mayorkas replied, "It is not the policy of this administration, we do not agree with the building of a wall.

"The law provides that individuals can make a claim for humanitarian relief, that is actually one of our proudest traditions," he said.

When pressed on Democrats' criticism of the removal of Haitian migrants and continued use of the Title 42 policy, Mayorkas defended the Biden administration's immigration actions.

"This administration, the Biden-Harris administration, has indeed rescinded the immoral, unethical and cruel policies, and we are rebuilding a system that's been entirely dismantled by the prior administration," Mayorkas said on CNN's 'State of the Union.'

### **Return to Top**

CNN: Mayorkas: About 4,000 migrants in Del Rio have been expelled under Covid-19 public health rule (Priscilla Alvarez and Chandelis Duster)

About 4,000 migrants apprehended by US Customs and Border Protection in Del Rio, Texas, over the last weeks have been expelled under a public health authority, known as Title 42, and 10,000 to 12,000

migrants have been released into the United States, Homeland Security Secretary Alejandro Mayorkas said Sunday.

"That is a public health authority. It is not an immigration policy. It is exercised as the CDC, the Centers for Disease Control (and Prevention), has ordered, in light of the arc of the pandemic," Mayorkas told CNN's Jake Tapper on "State of the Union." "The public has to remember that we are in the midst of a pandemic. The Delta variant caused a setback. ... This is a public health imperative to protect migrants themselves, local communities, our personnel and the American public."

He also said there are about 13,000 migrants who arrived in Del Rio in that same timeframe that have been put in immigration proceedings to determine whether they can remain in the US or be removed. Approximately 10,000 to 12,000 migrants who were detained in Del Rio, Texas in recent weeks have also been released into the United States, Mayorkas said during a separate interview with Fox News.

"It could be even higher," Mayorkas said Sunday. "The number that are returned could be even higher. What we do is we follow the law as Congress has passed it."

It's the latest update on the repatriation of migrants who amassed in Del Rio. The Department of Homeland Security has been conducting regular repatriation flights to Haiti.

On Saturday, it conducted five repatriation flights, including three flights from Del Rio, Texas to Port-au-Prince, Haiti and two flights from Del Rio, Texas to Cap Haitien, Haiti.

In March 2020, the Trump administration invoked the public health order, Title 42, that allowed border officials to turn back migrants encountered at the US-Mexico border, a move that in effect sealed off the border. Public health officials, at the time, suspected political motivations behind the decision. The Biden administration has relied on the public health order to turn away adults and families apprehended at the US southern border. Unaccompanied children remain exempt from the policy.

Pressed on Democrats' criticism of the removal of Haitian migrants and continued use of the policy, Mayorkas defended the Biden administration's immigration actions.

"This administration, the Biden-Harris administration, has indeed rescinded the immoral, unethical and cruel policies, and we are rebuilding a system that's been entirely dismantled by the prior administration," Mayorkas said on CNN, adding that the administration studied conditions in Haiti prior to removing Haitians.

The secretary also punted to the CDC when asked about the public health authority that allows the administration to swiftly remove migrant families and adults encountered at the border.

"If they determine that the public health imperative no longer exists and Title 42, which is a statute, a law, need not be applied to protect people, then it will not be applied any longer and we will proceed accordingly," Mayorkas said.

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Bloomberg: Mayorkas Says U.S. Won't Protect Southern Border With Wall (Craig Torres)

Homeland Security Secretary Alejandro Mayorkas said the Biden administration will not build walls on the border despite a pickup in crossings.

"We have seen large numbers of individuals encountered at our border making a claim for asylum, for humanitarian relief," Mayorkas said in an interview with "Fox News Sunday," adding that it's nothing new and spans several administrations. "It is the policy of this administration, we do not agree with a building of the wall."

"The law provides that individuals can make the claim for humanitarian relief," he said.

President Joe Biden faced criticism from fellow Democrats after a video emerged last week of Border Patrol agents menacing Haitian migrants at the Texas border. He called the scenes "horrible" and vowed those responsible "will pay."

Mayorkas said last week that about 30,000 migrants have arrived in the Texas border town of Del Rio since Sept. 9 and about 12,400 will be allowed into the U.S. while their asylum applications are considered by immigration courts.

Texas Governor Greg Abbott, a Republican, said his state will move to secure the border and immigrants will be arrested for trespassing. "They sent a message and signal to the entire world that they are not going to secure the border," Abbott said on "Fox News Sunday" of the Biden administration.

Abbott said Texas will work to secure its border using the National Guard and the Texas Department of Public Safety.

The U.S. Customs and Border Protection's Office of Professional Responsibility began an inquiry into the episode of agents menacing Haitians to determine possible disciplinary action. Abbott told Fox News that if federal agents are fired he will hire them to work for the State of Texas.

Democratic lawmakers including House Speaker Nancy Pelosi and Senate Majority Leader Chuck Schumer have criticized the administration's handling of thousands of Haitian migrants massed near Del Rio.

Mayorkas said Friday that all migrants have been cleared from a squalid camp under a bridge in Del Rio.

#### Return to Top

### The Hill: DHS secretary: We are working in a 'completely broken' immigration system (Joseph Choi)

Department of Homeland Security (DHS) Secretary Alejandro Mayorkas on Sunday said that the U.S. is capable of addressing the immigration crisis at the southern border, but acknowledged that "we are working in a completely broken system."

Appearing on NBC's "Meet the Press," Mayorkas pointed to the Biden administration's actions in Del Rio, Texas, where thousands of Haitian migrants had been camped out under a bridge.

"We have an incredible ability to deploy resources to meet the challenges that we face. And we actually have evidence that, quite powerfully, in Del Rio, Texas, in less than a week, we addressed a population of 15,000 there and now there are none," said Mayorkas.

Host Chuck Todd also asked if the U.S. has the ability to properly handle the crisis or if existing laws need to be changed, and Mayorkas appeared to agree with both options.

"Well, I think we meet the challenges, but we are working in a completely broken system. And as to that, there is unanimity in Washington and in the country. I've never heard anyone say that the laws in immigration are well structured."

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### The Hill: DHS secretary says Haitian migrant crisis is 'nothing new' (Joseph Choi)

Homeland Security Secretary Alejandro Mayorkas on Sunday shot back at criticisms of the Biden administration's handling of the Haitian migrant crisis, saying, "this is nothing new."

While appearing on Fox News Sunday, host Chris Wallace asked Mayorkas to respond to Texas Gov. Greg Abbott (R) who accused the White House of failing to secure the U.S.-Mexico border.

Wallace questioned whether or not the administration has created a "magnet" for migrants who feel they have a strong chance of staying in the U.S. when they cross illegally.

"This is nothing new. We've seen this type of irregular migration many, many times throughout the years. I don't know if Governor Abbott said the same thing in 2019, when there were more than a million people encountered at the southern border," Mayorkas said.

Mayorkas stressed that the Biden administration was operating under the laws and statutes that are in place in the U.S.

Wallace questioned why the Biden administration permitted the Haitian migrants to enter the U.S. at all, asking why a "wall or a fence" hadn't been put up.

"It is the policy of this administration: we do not agree with the building of the wall," said Mayorkas. "The law provides that individuals can make a claim for humanitarian relief. That is actually one of our proudest traditions."

When asked about the suspended horse patrol that was seen blocking Haitian migrants from entering the U.S., Mayorkas declined to directly comment on the situation due to the ongoing investigation into the situation.

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# Fox News: Mayorkas says as many as 12K out of 17K migrants have been released into U.S., and 'it could be higher' as DHS (Ronn Blitzer)

Secretary of Homeland Security Alejandro Mayorkas admitted Sunday that the vast majority of Haitian migrants who crossed the southern U.S. border in recent weeks have already been released into the United States, and it is possible that more will follow them.

So far, approximately 12,400 of the people are having their cases heard by immigration judges, while another 5,000 are being processed by the Department of Homeland Security. Currently, only 3,000 are in detention.

"Approximately, I think it's about ten thousand or so, twelve thousand," Mayorkas told "Fox News Sunday" when asked how many have already been released. He then acknowledged that this number could very well go up as the 5,000 other cases are processed.

"It could be even higher. The number that are returned could be even higher. What we do is we follow the law as Congress has passed it," Mayorkas said.

The secretary said the administration "will make determinations whether they will be returned to Haiti based on our public health and public interest authorities."

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# New York Daily News: Border crisis 'nothing new,' says Homeland Security Secretary Alejandro Mayorkas (Shant Shahrigian)

A top Biden administration official went on the defensive on Sunday over the White House's handling of an influx of Haitian migrants, calling the border drama "nothing new."

The U.S. has sent some 2,000 Haitians back to their home country in recent days, and some 8,000 mostly Haitian migrants gathered at a camp under a bridge at the U.S. returned to Mexico voluntarily, Homeland Security Secretary Alejandro Mayorkas said.

"This is nothing new. We've seen this type of irregular migration many, many times throughout the years," Mayorkas told "Fox News Sunday."

The administration has come under scathing criticism since images surfaced last week of U.S. Customs and Border Protection agents on horseback chasing migrants near the border in Texas.

President Biden denounced the conduct as "outrageous," promised a probe and halted use of horses by the border patrol.

Mayorkas said the behavior of the agents on horseback "does not reflect who CBP is, who we are as a department, nor who we are as a country."

But he defended the practice of using horses on the border, saying it "serves an incredibly important function."

He addressed criticism that sending migrants back to Haiti — which is reeling from a recent hurricane and earthquake — is inhumane.

The Biden administration has been using an order by former President Donald Trump justifying the expulsions on public health grounds.

"This administration, the Biden/Harris administration, has indeed rescinded the immoral, unethical and cruel policies, and we are rebuilding a system that has been entirely dismantled by the prior administration," Mayorkas said on CNN's "State of the Union."

"We made a determination, based upon the facts, that, in fact, individuals could be safely returned to Haiti," he added.

About 12,400 migrants cleared from the camp were headed to immigration court to learn if they can remain in the U.S., according to NPR.

Texas Gov. Greg Abbott pounced on criticism of the border patrol agents to emphasize his hard-line stance on immigration.

"I have worked side by side with those border patrol agents. I want them to know something: If they are at risk of losing their job, got a president who is abandoning his duty to secure the border, you have a job in the state of Texas," the Republican governor told "Fox News Sunday."

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# New York Post: Mayorkas admits 12,000 Haitians released in US — and more could follow (Mark Moore)

Homeland Security Secretary Alejandro Mayorkas admitted on Sunday that more than 12,000 Haitian migrants who had been camped out under a bridge near Del Rio, Texas, have been released into the US and more may follow them.

He told "Fox News Sunday" that there are about 12,400 Haitians in the process of having asylum claims heard by an immigration judge, while around 5,000 are being processed by the Department of Homeland Security.

About 3,000 are being detained.

"Approximately, I think it's about 10,000 or so, 12,000," Mayorkas responded when asked how many migrants have already been released.

He added that the number could go beyond 5,000 as other cases are processed.

"It could be even higher. The number that are returned could be even higher. What we do is we follow the law as Congress has passed it," Mayorkas said.

The secretary said the administration "will make determinations whether they will be returned to Haiti based on our public health and public interest authorities."

He also bristled under questioning by Fox News' Chris Wallace who said DHS figures show the "flood" of illegal immigration has gotten worse under the Biden administration.

"I wouldn't call it a flood," Mayorkas said.

Many of the migrants being released into the US may have coronavirus because the Biden administration is not requiring them to be tested or be vaccinated after they enter the US illegally.

Fox News' Chris Wallace asked Mayorkas how many of the 30,000 migrants were tested.

He said the administration follows "strict COVID testing protocols."

"We test, isolate, and quarantine unaccompanied children. We work with nonprofit organizations to test families," he said.

"Those who are in ICE custody are tested, isolated, and quarantined. Those who are expelled under the Title 42 Public Health Authority are returned immediately. They are not placed in immigration court proceedings, and those we do not test, because they are returned immediately," Mayorkas said.

The makeshift camp under the International Bridge was cleared at the end of last week, but at one point it contained as many as 30,000 migrants who lived in squalid conditions and created a humanitarian crisis for the White House.

The US deported about 2,000 of the migrants in flights to Haiti and roughly 8,000 voluntarily returned to Mexico.

Wallace pressed Mayorkas on how many of the migrants being freed in the US will remain and pointed out that the Justice Department estimates that about 44 percent of those released will miss their immigration court appearances.

"We have enforcement guidelines in place that provide the individuals who are recent border crossers who do not show up for their hearings are enforcement priorities and will be removed," Mayorkas said.

Wallace asked the secretary why the US didn't stop the migrants from entering the US when they first began amassing at the border in early September.

"We did. We encountered them as they gathered in that one section in Del Rio, Texas," he replied, noting that the administration has to operate under existing laws and statutes.

But Wallace asked why they hadn't erected a "wall or a fence" to keep the migrants from entering.

"It is the policy of this administration: we do not agree with the building of the wall," Mayorkas said. "The law provides that individuals can make a claim for humanitarian relief. That is actually one of our proudest traditions." Texas Gov. Greg Abbott, who followed Mayorkas' appearance on Fox News, accused the administration of "dereliction of duty."

"The United States Constitution itself requires that the president and that the federal government secure the sovereignty of the United States of America, including the states in the United States of America, and the Biden administration has abandoned any pretense of securing the sovereignty of either Texas or the United States by having these open border policies that you so well articulated," Abbott said.

"They have created a magnet that led to these massive groups of Haitians, as well as the other groups, that are coming here for one reason, and that's because they have sent a message and a signal to the entire world that they are not going to secure the border, they're going to allow them across," he said.

Wallace asked Mayorkas whether the White House is creating the conditions for a surge in migration.

He said there are 20,000 Haitians in Columbia, 3,000 in Peru and 1,500 in Panama waiting to come to the US.

"Haven't you given Haitians, and a million more immigrants will you have had encounters with since Joe Biden came into office, haven't you given them a reason to believe there's a reasonable chance if they come into this country, they'll end up being released into the country and have months or perhaps years to stay here?" Wallace asked.

"This is nothing new. We've seen this type of irregular migration many, many times throughout the years. I don't know if Governor Abbott said the same thing in 2019 when there were more than a million people encountered at the southern border," Mayorkas said.

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# Newsweek: DHS Sec. Alejandro Mayorkas Defends Deporting Haitians, Calls Immigration System 'Broken' (Natalie Colarossi)

Alejandro Mayorkas on Sunday called the U.S. immigration system "broken" and defended the deportation of Haitian migrants.

The Homeland Security Secretary, speaking to NBC's Chuck Todd on Meet the Press, said the decision to expel some Haitians from Texas this week was "not a mistake" and was made as a result of the COVID-19 pandemic.

"That is the exercise of a public health imperative. We're in the midst of a pandemic. The Centers for Disease Control and Prevention (CDC) has a Title 42 authority that we exercise to protect the migrants themselves, to protect the local communities, our personnel, and the American public. The pandemic is not behind us. Title 42 is a public health policy, not an immigration policy," Mayorkas said.

His comments come after the DHS said Friday that roughly 2,000 Haitian migrants were quickly deported from the country after more than 14,000 crossed the Rio Grande into Del Rio, Texas, in the past week. The department added that deportation flights will continue "on a regular basis" as individuals are able

to be expelled without the opportunity for asylum under pandemic powers, the Associated Press reported.

In total, the U.S. has allowed about 12,400 of the migrants to temporarily stay in the country in the past week while they make their claim before an immigration judge. Mayorkas said Sunday that around 8,000 migrants have also voluntarily left the U.S. for Mexico in the past week.

The influx of migrants comes after Haiti was hit by a deadly 7.2-magnitude earthquake this summer, a tragedy compounded by the assassination of its prime minister and a crippled economy. The rapid congregation of migrants in one week prompted the DHS to quickly ramp up deportation efforts in Texas, resulting in fierce backlash from some prominent Democratic lawmakers.

For example Representative Bennie Thompson, chairman of the House Homeland Security Committee, joined others in condemning the expulsion of vulnerable migrants. Controversial video footage of border patrol agents on horseback appearing to lash at the migrants also prompted criticism against officials at the southern border.

On Sunday, Mayorkas said the U.S. is working within a "completely broken" immigration system.

"I am focused on the mission, Chuck, and the challenges we face, and our ability to meet hose challenges," he said. "I think we meet the challenges, but I think we are working within a completely broken system. As to that, there is unanimity in Washington and the country. I've never heard anyone say that the laws of immigration are well structured."

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# Washington Times: Mayorkas: 12,000 migrants released into U.S. from encampment under Del Rio bridge (Valerie Richardson)

The thousands of primarily Haitian migrants camped out last week under the Del Rio International Bridge are no longer there, which begs the question: Where did they go?

According to Homeland Security Secretary Alejandro Mayorkas, an estimated 10,000 to 12,000 of the 17,400 illegal immigrants detained in Del Rio have been released into the U.S. as their cases are considered by immigration judges.

"They're released on conditions. Approximately, I think it's about 10,000 or so, 12,000," said Mr. Mayorkas under grilling from Fox News Sunday host Chris Wallace.

About 5,000 of the 17,400 are still being processed by the department, which means the number of those released could grow, while 3,000 are in detention.

Mr. Mayorkas said that "it could be even higher. The number that are returned could be even higher. What we do is we follow the law as Congress has passed it."

About 30,000 Haitian migrants have come across the border since Sept. 9. At one point, an estimated 15,000 illegal immigrants were living under the bridge in makeshift tents and structures, as shown in viral television footage, but the latest shots show the Del Rio camp has been entirely cleared.

"If, in fact, someone is not expelled under the public health authority of the Centers for Disease Control, then they are placed in immigration enforcement proceedings," Mr. Mayorkas said. "They have an opportunity to make their claim for relief to a judge as the law requires."

The department said Friday that about 2,000 migrants had been deported on flights back to Haiti, and 8,000 returned voluntarily to Mexico.

Mr. Wallace said that about 44% of released illegal immigrants miss their court hearings, meaning that "millions of people end up in this country and just disappear," but Mr. Mayorkas said "it is our intention to remove them."

"Chris, 11 million people in this country without lawful presence is a compelling reason why there is unanimity about the fact that our immigration system is broken and legislative reform is needed," Mr. Mayorkas said.

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Daily Mail: Mayorkas admits 12,000 illegal Haitians out of 17,000 have been released into the US, and it could go even higher - as he DOWNPLAYS border crisis by saying 'this is nothing new' and 'I wouldn't call it a flood' (Katelyn Caralle)

Alejandro Mayorkas finally admitted on Sunday that 12,000 Haitian migrants have been released into the U.S., claiming that number could go up as 5,000 other cases are still being processed.

'Approximately, I think it's about 10,000or so – 12,000 thousand,' Mayorkas told Fox News Sunday when asked how many have already been released into the country.

'It could be even higher,' he added. 'The number that are returned could be even higher. What we do is we follow the law as Congress has passed it.'

The new numbers suggest that there were actually 17,000 mostly Haitian migrants part of the Del Rio, Texas encampment rather than the previous figures that said the number didn't top 15,000.

It comes as even more Haitian migrants make their way to the U.S., with images emerging Saturday of a caravan traveling to the Panama border from Acandi, Colombia.

Mayorkas continued to downplay the massive southern border crisis on Sunday, saying these migrations are 'nothing new' and telling Fox he wouldn't classify the crossing as a 'flood' of people.

'11 million people in this country without lawful presence is a compelling reason why there is unanimity about the fact that our immigration system is broken and legislative reform is needed,' Mayorkas said.

He added when asked about the surge: 'I wouldn't call it a flood.'

Previously, partial information was released by DHS this week about the status of the thousands of mostly Haitian migrants who crossed into Del Rio, Texas over the last few weeks.

Those figures, however, only accounted for only 10,000 migrants – meaning at least another 5,000 were unaccounted for.

The information DHS did release on Thursday showed that 1,401 migrants were sent back to Haiti on 12 different flights, 3,206 remain in custody, and 5,000 are still camped out beneath the Del Rio International Bridge.

'Why didn't you stop them from coming into the country?' Fox host Chris Wallace asked the DHS chief on Sunday.

'We did,' Mayorkas insisted. 'We encountered them as they gathered in that one section in Del Rio, Texas.'

Many Haitian migrants who have been camped out in South and Central American countries for months - and some for years – claim they now feel it's time to make the trek to the U.S. due to Biden's immigration policies.

Even though Mayorkas and the administration insist the border is 'closed,' migrants are easily able to cross the border and claim asylum, which kicks off a process that many times allows them to remain in the U.S. while their case is considered.

Last weekend, DHS ramped up deportation efforts by beginning removal flights back to Haiti.

This caused many migrants to trek back into Mexico from Del Rio to avoid deportation to their homeland, but the vast majority of the illegal immigrants are still in the U.S. and – it is now known – were released from custody.

Customs and Border Protection garnered an immense amount of backlash for carrying out the deportation and deterrence efforts after images emerged of agents on horseback appearing to use reins as whips against the migrants.

Included in the backlash was Representative Maxine Waters of California who claimed the 'whipping' images are 'worse than slavery' and fellow black Congresswoman Ayanna Pressley suggested the actions were counterintuitive to the Black Live Matter movement as they were used on black Haitian migrants.

In response, the White House announced on Thursday that it would no longer allow Border Patrol agents in Del Rio to ride on horseback. Mayorkas also announced the agents in the images were reassigned to administrative duties while an investigation into their actions is carried out.

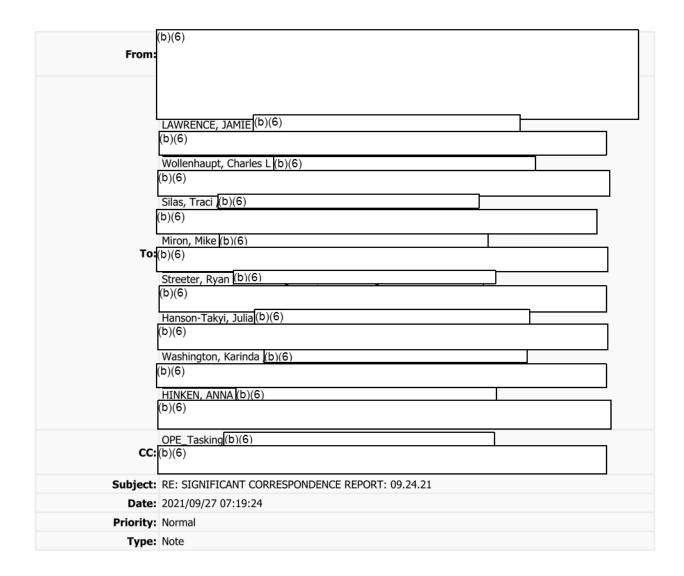
Agents are angered that they are facing consequences after being directed to do their job. They have reasoned that they were only using the split reins to direct their horses or to ward off immigrants – but not to whip them.

The photographer who took the images of the agents on horseback, Paul Ratje, said that he did not witness any agents use reins to whip migrants.

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## ###

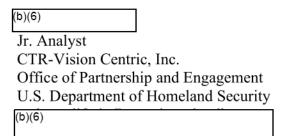
Sender:	Mayorkas, Alejandro((b)(6)		
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	ESPINOSA, MARSHA (b)(6) (b)(6)		1
	HIGGINS, JENNIFER (b)(6)		
	(b)(6)		
Recipient:	REZMOVIC, JEFFREY (b)(6)		
	(b)(6)		
'	ULLOA, ISABELLA (b)(6)		
	(b)(6)		
Sent Date:	2021/09/26 19:03:27		
Delivered Date:	2021/09/26 19:03:29		



## Good morning,

This is a friendly reminder that your response is due by 9:30am today.

Best,



From: (b)(6)
Sent: Friday, September 24, 2021 3:57 PM
To: LAWRENCE, JAMIE (b)(6) YEE, BRITTON (b)(6)
FONG, HEATHER (b)(6) Wollenhaupt, Charles L
(b)(6) Silas, Traci (b)(6) Miron, Mike
(b)(6) MAYER, JASON (b)(6) Bynum, Brandi
(b)(6) Streeter, Ryan (b)(6) Hanson-Takyi, Julia
(b)(6) Washington, Karinda (b)(6) HINKEN,
ANNA (b)(6) CONOVER, GARRET (b)(6)
Cc: OPE_Tasking (b)(6)
Subject: SIGNIFICANT CORRESPONDENCE REPORT: 09.24.21
Good afternoon All,
Please see the attached ESEC Significant Correspondence Report for correspondence received by the Department in the prior 24 hours. ESEC request your review and comment on any letter that your office has an interest in due to a related stakeholder communication, upcoming outreach/OPE engagement, or an S1 engagement/meeting event – specifically in regard to the following:
Proposed signatory recommendation
2. Priority due dates(s) recommendation
3. Component lead recommendation
Please return your recommendations to OPE_Tasking by 9:30AM on Monday, September 27.
Please note: Negative responses are required.
Best,
(h)(c)
(b)(6)
Jr. Analyst Contractor- Immersion Consulting, LLC.
Office of Partnership and Engagement (OPE)
U.S Department of Homeland Security
(b)(6)
(b)(6)
From: Clark, Nancy (b)(6)
Sent: Friday, September 24, 2021 3:52 PM
<b>To:</b> Front Office Review CC (b)(6)
Cc: Fauquet, Stephanie (b)(6) ESEC-External Liaison <esec-< td=""></esec-<>
(b)(6) Clark, Nancy (b)(6) Blackwell, Juliana
(b)(6) OPE_Tasking (b)(6) CARNES, ALEXANDRA
(b)(6) GEER, HARLAN (b)(6) WU, MIKE
(b)(6) SEYLER-SCHMIDT, GUSTAV (b)(6) BROOKS,
REBECCA (b)(6) FALLON, KATHLEEN (b)(6)

REZMOVIC, JEFFREY (b)(6)	ULLOA, ISABELLA (b)(6)	
O'CONNOR, KIMBERLY (b)(6)	BRAUN, JACOB (b)(6)	
LUGO, ALICE (b)(6)	HIMMEL, CHLOE (b)(6)	HIGGINS,
JENNIFER (b)(6)	CALLAHAN, MARY ELLEN (b)(6)	

Subject: SIGNIFICANT CORRESPONDENCE REPORT: 09.24.21

Attached for your review is today's significant correspondence report. Based on our review and standard business practices, ESEC recommends tasking these letters to the below Components, with recommended signature level and priority. We ask that counselors provide any substantive guidance on letter assignment (in bullet format), response messaging, and letter priority. OLA and OPE should provide input on priority and signature levels if incorrect. We are asking for this input by 10 am Monday morning. If no response the letter will be tasked as reflected here.

Control	Date	To	From	Summary	Counselor	Tasked	Signature	Pr
Number	Received						Level	Le
1221478 21-3704	09.24.21	S1	Sen. Hagerty	Writes to urge that, in the event of a government shutdown, to designate all border security and immigration-enforcement personnel, including CBP Border Patrol and ICE deportation officers, as essential employees who may continue to work.	N/A	СВР	FYI	N/
1221511 21-3992	09.24.21	POTUS	Judith Browne Dianis Advancement Project	Writes to offer the Administration counsel on immigration practices and policies that would benefit migrants fleeing to the U.S.	N/A	СВР	FYI	N/

1221514 21-3993	09.24.21	S1	Multi-State Attorney General's	Writes urging the Administration to be more compassionate in its handling of Haitian refugees at the border.	Immigration Team	PLCY USCIS ICE CBP	OPE	Ro
1221510 21-3706	09.24.21	S1	Sen. Moran	Writes to express my strong concerns with the ongoing and growing humanitarian and national security crisis at our southern border.	Immigration Team	СВР	OLA	Ur

Please submit any guidance to ESEC-External, Stephanie Fauquet, and Juliana Blackwell, all are copied on this e-mail.

## **Definitions of Priority:**

Urgent/High: 14 Business Days to Final Routine: 30 Business Days to Final

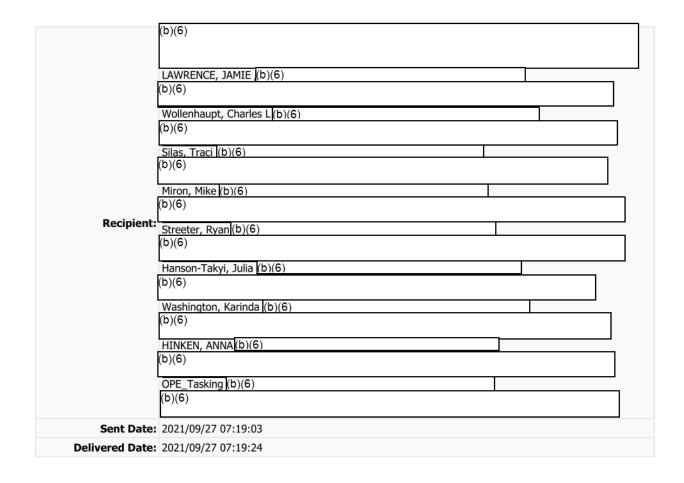
Is Interim Necessary (YES/NO)? 1 Business Day.

Regards,

Nancy Clark
Office of the Executive Secretary
Office of the Secretary
U.S. Department of Homeland Security
Desk:(b)(6)
Cell:(b)(6)

"ESEC: Excellent Service, Endless Commitment"

	(b)(6)
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Sender:	



## **EVENT MEMO**

August 16, 2022

**MEMORANDUM** 

FROM: Office of Public Engagement

SUBJECT: Meeting with Latino Leaders on Del Rio, Haiti

EVENT DATE: Monday, September 27, 2021 TIME: 3:30 PM ET – 4:30 PM ET

LOCATION: EEOB 159 (Congressman Richmond will call in).

Dial: (b)(6)

Meeting ID: (b)(6)

Passcode: (b)(6)

# I. Statement of Purpose

The purpose of this meeting is to proactively reach out to key Latino leaders to update them on steps the Administration has taken address the situation in Del Rio and in Haiti. These invited leaders represent a variety of different interests and although there are only a few organizations focused on immigration, issues about migration and immigration matter to all of them. Almost all of these leaders have publicly criticized Customs and Border Patrol for the images that emerged from Del Rio.

Key items to communicate to this audience are (1) what we know about where things stand, (2) acknowledgment of photos/steps we're taking, (3) overview of humanitarian actions we've taken to date and (4) acknowledgement that some have travelled to Del Rio to offer direct support.

14 Latino organization leaders were invited to participate in this event.

# II. Participants

### Administration

Alejandro Mayorkas, Secretary of Homeland Security

- Cedric Richmond, Director of the White House of the Office of Public Engagement
- Juan Gonzalez, Senior Director for Western Hemisphere at the White House National Security Council

## **Invited Guests**

- Héctor Sánchez Barba, Executive Director and CEO, Mi Familia Vota (confirmed)
- Kenneth Romero, Executive Director, National Hispanic Leadership Agenda (confirmed)
- Maria Teresa Kumar, Voto Latino (confirmed)
- Nathalie Rayes, President and CEO, Latino Victory (sending proxy)
- Sindy Benavides, National President, League of United Latin American Citizens (LULAC) (sending proxy)
- Janet Murguía, President and CEO, UnidosUS
- Frankie Miranda, President and CEO, Hispanic Federation (HF)
- Ramiro Cavazos, President and CEO, U.S. Hispanic Chamber of Commerce
- Tom Saenz, MALDEF
- Sergio Gonzales, Executive Director, The Immigration Hub
- Lorella Praeli, Co-President, Community Change Action
- Jess Morales Rocketto, Director of Civic Engagement, National Domestic Workers Alliance
- Mark Magana, President and CEO, Green Latinos
- Arturo Vargas, CEO, NALEO, National Association of Latino Elected and Appointed Officials

# III. Sequence of Events

- Cedric welcomes everyone, delivers opening remarks, turns to Secretary Mayorkas
- Secretary Mayorkas update on status on the ground in Del Rio, passes it to Juan
- Juan provides an update on efforts on the ground in Haiti, then opens it up to questions
- Q&A for Secretary Mayorkas and Juan
- Meeting ends

## IV. <u>Background</u>

Below are some of the ways in which Latino leaders have publicly responded to the situation at Del Rio as well as toplines from conversations some leaders have already participated in with the administration on the topic of Haiti and Del Rio.

- Jess Morales Rocketto (National Domestic Workers Alliance):
   Jess has participated in two previous meetings with Administration
   where Del Rio and Haiti were discussed. From her perspective what
   occurred was predictable given current policies with Title 42 and
   MPP, and believes the administration is not living up to the
   President's vision set forth during the campaign. She believes the
   administration has a short window to course-correct given the
   increased level of interest among those who care about anti Blackness.
- Sergio Gonzales (Immigration Hub): Sergio participated in two
  previous meetings with Administration where Del Rio and Haiti were
  discussed. He has questions about what information is being
  provided to migrants to ensure they are aware of their rights and what
  the latest is in terms of appointments and hires. He also believes
  conversations must be had about re-evalutating ICE and CBP funding
  as part of the budget process.
- Maria Teresa Kumar (Voto Latino): "In no situation is this permissible. This deserves full scrutiny and disciplinary review." <a href="https://twitter.com/MariaTeresa/status/1440000669927231495?s=20">https://twitter.com/MariaTeresa/status/1440000669927231495?s=20</a>
- UnidosUS (Janet Murgia): "What we have seen of US Border Patrol agents confronting Haitian migrants is unacceptable. We fully support @DHSgov's investigation and call for those responsible to be held fully accountable. As a civil rights org, we condemn this treatment and urge respect for human rights."
   <a href="https://twitter.com/WeAreUnidosUS/status/1440403440321007623?s">https://twitter.com/WeAreUnidosUS/status/1440403440321007623?s</a>
- Latino Victory Project (Nathalie Rayes): "We are deeply disturbed by the images coming out of Del Rio, Texas. Border Patrol agents swinging whips at Haitian migrants seeking asylum in the United States is cruel, immoral, and inhumane. Read our full statement: <a href="https://twitter.com/latinovictoryus/status/1440020404903587841?s=2">https://twitter.com/latinovictoryus/status/1440020404903587841?s=2</a>
   "

 Lorella Praeli (Community Change Action): "There are no words to justify this kind of abuse of power by border patrol agents." https://twitter.com/lorellapraeli/status/1440021798809178118?s=20

# V. Key Points

# Del Rio & Title 42 Talking Points

# **Topline Points:**

As has been reported, over the past week we have seen an increase in Haitian migrants arriving at Del Rio, TX largely from Chile, Brazil and Mexico. DHS is working to quickly and humanely move people away from the bridge. As we do at all points across our border, we are expelling migrants under the CDC's Title 42 health order regardless of country of origin. Vulnerable individuals, such as pregnant women, families with young children and those with medical conditions are priorities for placement into Alternatives to Detention and removal proceedings. We are focused on addressing irregular migration and building safe, legal, orderly pathways for migration so people don't have to take the perilous journey to our border.

- The Administration took a whole-of-government approach to address the humanitarian situation in Del Rio.
- We immediately surged resources to support migrants who were under the bridge by sending over 150 medical staff and 600 personnel. We stood up four climate-controlled tents and quickly moved vulnerable individuals from the bridge. We also worked with FEMA to provide water and other supplies, with Red Cross to provide hygiene kids and World Central Kitchen to provide meals.
- There are less than 200 people left under bridge from a high of almost 15,000 on Saturday, September 18.

# Processing:

At Del Rio, and across the southern border, pursuant to the CDC's Title 42 authority, the federal government continues to expel single adults and

families attempting to enter the United States irregularly – regardless of country of origin.

DHS is conducting regular expulsion and removal flights to Haiti, Mexico, Ecuador, and North Triangle countries. State and DHS have negotiated up to 7 flights per day to Haiti under the CDC's Title 42 public health authority.

Of the total encountered at Del Rio since 9/9/21, 28,900:

- Approximately 2,000 people have already been removed to date to Haiti, and another 800 will soon be removed to Haiti, where we have surged humanitarian resources and support, including medical assistance, temporary housing and counseling support.
- Estimated 8,000 migrants walked back to Mexico.
- Approximately 5,700 are in DHS custody awaiting a determination of whether they will be removed or processed for asylum
- Approximately 12,400, are in Title 8 immigration proceedings in which their asylum cases will be adjudicated by a judge.

## Clarification on Title 42 and removals:

CBP's use of the Title 42 authority is not exclusive to the situation in Del Rio or to Haitian migrants. This fiscal year, CBP has consistently applied discretion to the use of Title 42 to expel non-citizens from all nationalities based on a multitude of circumstances.

DHS is exploring options to return Haitians who have lawful status in Chile and Brazil to those countries. These negotiations are ongoing and these removals aren't an option right now as DHS needs to quickly move people.

## **Humanitarian Aid to Haiti:**

The United States is the largest humanitarian donor in Haiti and remains committed to supporting the Haitian people.

The United States continues to work urgently to deliver aid to the Haitian people during their time of need, through the actions and resources of a number of U.S. agencies, led by USAID which recently provided an additional \$32 million in new assistance to support earthquake response efforts.

This funding builds on the USAID Disaster Assistance Response Team's (DART) ongoing efforts on the ground assessing needs and coordinating response efforts, as well as the assistance that USAID partners have been providing to help tens of thousands of people since the earthquake struck.

In January 2021, the Biden-Harris Administration announced \$75.5 million in bilateral development and health assistance for a wide range of issues for Haiti.

Since the 2010 earthquake, the United States has made available over \$5.1 billion for assistance to Haiti to support life-saving post-disaster relief as well as longer-term recovery, reconstruction, and development programs.

Steps are underway to augment reception for returning migrants at the two airports of Cap-Haitien and Port-au-Prince. USAID is working to set up assistance including:

- Food and beverage during the registration process;
- Basic hygiene kits (soap, toothpaste and toothbrush, a small towel, deodorant, razor), dignity items for women and girls, and specific items for babies/infants;
- Unconditional cash to purchase transportation and personal items such as clothes or phone credits;
- o First aid and referral for medical assistance when needed;
- Protection for the most vulnerable migrants;
- Access to phones to contact relatives upon arrival;
- Temporary housing for vulnerable families/cases, as needed; and
- Psychosocial support and counseling services.

 Pending more significant improvements, minor repairs and refurbishment of facilities at the two airports are being undertaken.

USAID is also taking steps to support reintegration of Haitians by expanding community stabilization projects, including cash-for-work programs and programs for at-risk youth.

## Additional Support for Haiti:

- This year, the Administration extended Temporary Protected Status to 155,000 Haitian nationals living in the United States, which provides them temporary lawful status and permission to work.
- USAID is also taking steps to support reintegration of Haitians by expanding community stabilization projects, including cash-for-work programs and programs for at-risk youth.
- The United States is Haiti's largest donor \$5.1 billion since 2010. In 2021 we are providing well over \$200 million in assistance for Haiti's security and development, including 500,000 vaccines.
- On Haiti's governance challenges, we are committed to supporting Haitians define their own political future by supporting the Civil Society Forum of hundreds of civil society organizations that have come together.
- USAID has already set up a \$5.5 million program to provide on-theground assistance to repatriated Haitian migrants.

#### Reconciliation

Given the parliamentarian's ruling on a pathway to citizenship through reconciliation. What the President and White House intend to do next to push for citizenship.

- The President has made very clear that he supports efforts by Congress to include a pathway to citizenship in the reconciliation package.
- He is grateful to Congressional leadership for all of the work they are doing to make this a reality.
- The Parliamentarian's ruling is deeply disappointing but we fully expect our partners in the Senate to come back with alternative proposals for the Parliamentarian to consider.

## VI. Bios



## Lorella Praeli, President, Community Change Action

Lorella is the President of Community Change Action. Community Change Action's mission is to build the power and capacity of low-income people, especially low-income people of color, to change the policies and institutions that impact their lives. Community Change Action advocates for policies at the federal level and

has some staff in key states. Community Change Action is part of the We Are Home campaign, the mission of which is to achieve a pathway to citizenship for as many people as possible as part of the recovery package. Most recently, she was the ACLU's Deputy National Political Director, where she fought to defend and expand the rights of immigrants and refugees. Prior to joining the ACLU, Lorella mobilized the Latino vote as Hillary Clinton's National Latino Vote Director and served as United We Dream's Director of Advocacy and Policy.



## Janet Murguia, President, UnidosUS

Since 2005, Janet has served as President and CEO of UnidosUS (formerly known as National Council of La Raza)—the nation's largest Latino civil rights and advocacy organization. UnidosUS advocates for policies at the national level and functions as an umbrella organization to nearly 300 affiliates across the country

that provide direct services and advocate for policies locally. UnidosUS is part of the We Are Home campaign, the mission of which is to achieve a pathway to citizenship for as many people as possible as part of the recovery package. In that role, Murguía has sought to strengthen UnidosUS's work and enhance its record of impact as a vital American institution. Murguía has also worked to amplify the Latino voice on issues affecting the Hispanic community such as education, health care, immigration, civil rights, and the economy.



## Jessica Morales Rocketto, Civic Engagement Director, National Domestic Workers Alliance

Jess is the Civic Engagement Director of the National Domestic Workers Alliance and the Executive Director of Care in Action, where she spearheads advocacy and electoral campaigns for the 2.5 million domestic workers in this country. National Domestic Workers Alliance advocates at the national and state level for the rights and protections of domestic workers. National Domestic

Workers Alliance has more than 7- grassroots affiliates and chapters across the country. She is the Co-Chair of the Families Belong Together Coalition, the campaign to end family separation and detention, and a co-founder of Supermajority, a new women's political action group. Jess is an alumna of Hillary for America, the AFL-CIO, Obama for America, and the Democratic National Committee. In 2019, Jess was honored in the first TIME 100 Next cohort, a list of rising stars who are shaping the future.



Hector Sanchez, President, Mi Familia Vota Héctor is the Executive Director and CEO of Mi Familia Vota, a Senior Fellow at GW Cisneros Hispanic Leadership Institute, and the Chair Emeritus of NHLA (National Hispanic Leadership Agenda). Mi Familia Vota is a national civic engagement organization that unites Latino, immigrant, and

allied communities to promote social and economic justice through citizenship workshops, voter registration, and voter participation. Mi Familia Vota has operations in Arizona, California, Colorado, Florida, Nevada, and Texas. In these roles, he is an indefatigable voice advancing policy priorities, civic participation and fighting systemic injustices against

Latinos, immigrants and the most vulnerable communities.



# Frankie Miranda, President and CEO, Hispanic Federation

Frankie is the President and CEO of the Hispanic Federation (HF), the nation's premier Latino non-profit membership organization. The Hispanic Federation seeks to empower and advance the Hispanic community,

support Hispanic families, and strengthen Latino institutions. The Hispanic Federation funds local organizations in 26 states and has staff in New York,

Florida, North Carolina, and Puerto Rico. The Hispanic Federation has strong Puerto Rican membership, both within the island and the diaspora. He is a well-respected leader with critical knowledge of the challenges and opportunities facing the Latino community in the 21st century. Frankie has served in various capacities at the Federation since 2006, including Assistant Vice President of Communications, Vice President for External Affairs, Senior Vice President, and most recently, Executive Vice President. In these roles, he managed the Federation's operation and expansion initiatives and oversaw the annual gala, which under his leadership now raises more than \$2.7 million annually.



# Tom Saenz, President, Mexican American Legal Defense and Educational Fund (MALDEF)

Tom is the President and General Counsel of MALDEF, where he leads the civil rights organization's five offices in pursuing litigation, policy advocacy, and community education to promote the civil rights of Latinos living in the United States. MALDEF is the nation's leading Latino legal civil rights organization. Saenz re-joined

MALDEF in August 2009, after spending four years on Los Angeles Mayor Antonio Villaraigosa's executive team as Counsel to the Mayor. He previously spent 12 years at MALDEF practicing civil rights law as a staff attorney, regional counsel, and Vice President of litigation. He served as MALDEF's lead counsel in numerous cases in the areas of education, employment, immigrants' rights, and voting rights.



Maria Teresa Kumar, President and CEO, Voto Latino Maria Teresa is the President and CEO of Voto Latino, a grassroots political organization focused on educating and empowering a new generation of Latinx voters, as well as creating a more robust and inclusive democracy. They shepherd the Latinx community towards full realization of

its political power through innovative digital campaigns, culturally relevant programs and authentic voices. Kumar began her career as a legislative aide to Democratic congressman Vic Fazio. She later attended the John F. Kennedy School of Government at Harvard University, where she recognized the importance of technology in improving the gap in equality in Latino lives. She began working with the Latino advocacy group, Voto Latino in 2004. Currently based in Washington DC, the organization uses

marketing campaigns and technology to encourage Latinos to participate in the political process.



Ramiro Cavazos, President & CEO, United States Hispanic Chamber of Commerce Ramiro is the President and Chief Executive Officer of the United States Hispanic Chamber of Commerce (USHCC). The USHCC actively promotes the economic growth, development, and interests of more than 4.7 million Hispanic-owned businesses.

Previously, he served as the President & CEO of the San Antonio Hispanic Chamber of Commerce for 10 years. With his expertise in economic development, he has served as the Director of Economic Development for the City of San Antonio, Director of Research and Economic Development for the UT Health Science Center, and as the Global Public Affairs Manager for the Levi Strauss Company and Foundation for the Texas, Mexico, and Latin America region. A native of Weslaco in the Rio Grande Valley, he is a 7th generation Texan. Ramiro and his wife Christa are parents of two boys, 13 and 10 years-old.



Nathalie Reyes, President & CEO, Latino Victory Fund Nathalie is the President and CEO of Latino Victory, a progressive organization working to increase Latino political power, grow Latino representation at every level of government, and build a base of Latino donors to support this work. The Latino Victory Project specializes in recruiting and supporting Latino candidates for local and

state office. The Latino Victory Project endorsed Vice President Biden during the primaries. Previously, Nathalie was the Vice President of Public Affairs for Grupo Salinas where she was in charge of the company's philanthropic activities in the U.S. which sought to improve the quality of life of Latinos. Formerly, Nathalie served as Los Angeles Mayor James Hahn's Deputy Chief of Staff, where she directed the Mayor's Office of Intergovernmental Relations as well as the Mayor's appointments to City commissions and Boards.



# Arturo Vargas, CEO, National Association of Latino Elected Officials (NALEO)

Arturo is the Chief Executive Officer of NALEO Educational Fund, a national nonprofit organization that strengthens American democracy by promoting the full participation of Latinos in civic life. National Association of Latino Elected Officials focuses on key issue areas like the census, immigration, and voting

rights. Arturo has held these positions since 1994. Prior to joining NALEO Educational Fund, Arturo held various positions at the Mexican American Legal Defense and Educational Fund (MALDEF), including Vice President for Community Education and Public Policy. Before joining MALDEF, he was the senior education policy analyst at the National Council of La Raza in Washington, D.C.



Mark Magana, President and CEO, GreenLatinos
Mark is the Founding President & CEO of GreenLatinos, a
national network of Latino environmental and conservation
advocates. GreenLatinos is a national non-profit
organization that convenes a broad coalition of Latino
leaders committed to addressing national, regional and local
environmental, natural resources and conservation issues

that significantly affect the health and welfare of the Latino community. Mark was Special Assistant to President Clinton for White House Legislative Affairs and Senior Policy Advisor to the House Democratic Caucus Vice-Chair Robert Menendez. Mark also served as the Congressional Liaison at the Department of Health and Human Services as Legislative Assistant to Representative Jim McDermott (D-WA). As an early supporter of Senator Obama's Presidential Campaign, in February of 2007, Mark founded the National Latinos for Obama. Originally from Los Angeles, Mark lived in Washington, DC for 30 years and just recently moved to Boulder, CO with his wife and young children.



## Kenneth Romero, Executive Director, National Hispanic Caucus of State Legislators (NHCSL); Chair, National Hispanic Leadership Agenda

Kenneth serves as the current Chair of the National Hispanic Leadership Agenda (NHLA). Established in 1991, NHLA is a nonpartisan association of major Hispanic national organizations. NHLA brings together Hispanic leaders to

establish policy priorities that address and raise public awareness of the major issues affecting the Latino community. Kenneth also serves as the Executive Director of National Hispanic Caucus of State Legislators (NHCSL). NHCSL is nonpartisan, nonprofit organization, representing over 300 elected Hispanic State legislators throughout the United States, Puerto Rico and the Virgin Islands. The NHCSL's primary mission is to organize Hispanic state legislators who advocate on behalf of Hispanic communities across the United States. Kenneth has also served in several roles in the Puerto Rican public sector and U.S. federal government.



# Arturo Vargas, CEO, National Association of Latino Elected Officials (NALEO)

Arturo is the Chief Executive Officer of NALEO Educational Fund, a national nonprofit organization that strengthens American democracy by promoting the full participation of Latinos in civic life. National Association of Latino Elected Officials focuses on key issue areas like the census, immigration, and voting

rights. Arturo has held these positions since 1994. Prior to joining NALEO Educational Fund, Arturo held various positions at the Mexican American Legal Defense and Educational Fund (MALDEF), including Vice President for Community Education and Public Policy. Before joining MALDEF, he was the senior education policy analyst at the National Council of La Raza in Washington, D.C.



## Sergio Gonzalez, Executive Director, The Immigration Hub

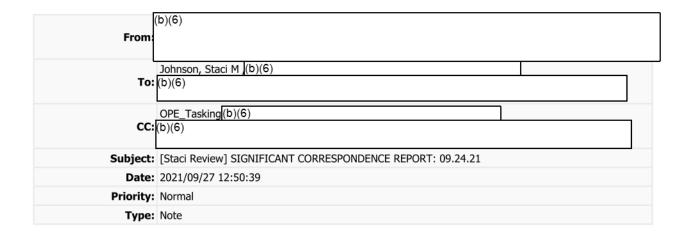
Prior to joining the Hub, Sergio served as Senior Policy Advisor to U.S. Senator Kamala Harris (D-CA) on immigration, homeland security, government affairs, labor and LGTBQ issues. He worked closely with Sen. Harris on oversight of the Trump Administration's immigration policies, including family

separation, the decision to end DACA, and expansion of ICE enforcement. Sergio was also Senior Policy Advisor to U.S. Senator Michael Bennet (D-CO) and helped craft the gang of eight's immigration reform bill in 2013. Additionally, he led efforts to strengthen diversity and inclusion across the federal government as Deputy Chief of Staff for the U.S. Office of Personnel Management under the Obama White House. Sergio also served as Regional Director for Secretary Hillary Clinton's 2016 campaign where he oversaw fourteen states and was Colorado Political Director for President Obama's 2012 re-election campaign and for Sen. Bennet's race in 2010. He originally began his career as a social case worker helping teens to emancipate from the foster care system.



Sindy Benavides, President, LULAC
Sindy Marisol Benavides is a Honduran-American immigrant who has experienced the American dream, and now devotes her career to public service, ensuring that countless young people, women, and immigrants have the same opportunity. She is currently Chief Executive Officer for the League of United Latin American Citizens (LULAC), the oldest Hispanic civil rights

organization in the country. She previously served as the Chief Operating Officer and National Director for Civic Engagement and Community Mobilization for LULAC, Vice President of Field & Political Operations for Voto Latino and as Northern Virginia Political Director for the 2012 Kaine for Virginia senatorial campaign. She has also been National Director of Community Outreach for the Democratic National Committee, and Latino Liaison and Director of Gubernatorial Appointments for Governor Timothy M. Kaine.



#### Good afternoon Staci,

We received negative responses from Office Heads, but did not receive any responses from CMO, IGA, NGO and SI. Please advise if we can release a negative response to ESEC.

Best,

(b)(6)					
Jr. Analyst					
Contractor-Vision Centric, Inc.					
Office of Partnership and Engagement					
U.S. Department of Homeland Security					
(b)(6)					
Cell:(b)(6)					

Subject: SIGNIFICANT CORRESPONDENCE REPORT: 09.24.21

From:(b)(6)			]	
Sent: Friday, September 24, 2	2021 3:57 PM		_	
To: LAWRENCE, JAMIE (b)(6)		YEE, BRITTON (b)(6)		
FONG, HEATHER (b)(6)	Wol	lenhaupt, Charles L		
(b)(6)	Silas, Traci (b)(6)		Miron, Mike	
(b)(6)	MAYER, JASON (b)(6)		Bynum, Brandi	
(b)(6)	Streeter, Ryan (b)(6)		Hanson-Takyi, Julia	
(b)(6)	Washington, Karin	da (b)(6)		HINKEN,
ANNA (b)(6)	CONOVER, GARRE	T (b)(6)		
Cc: OPE_Tasking (b)(6)				

Good afternoon All,

Please see the attached ESEC Significant Correspondence Report for correspondence received by the Department in the prior 24 hours. ESEC request your review and comment on any letter that your office

has an interest in due to a related stakeholder communication, upcoming outreach/OPE engagement, or an S1 engagement/meeting event – specifically in regard to the following:

- 1. Proposed signatory recommendation
- 2. Priority due dates(s) recommendation
- 3. Component lead recommendation

Please return your recommendations to OPE\_Tasking by 9:30AM on Monday, September 27.

Please note: Negative responses are required.

Best,			
(b)(6)			
Jr. Analyst			
Contractor-Immersion Consult	ing, LLC.		
Office of Partnership and Engage	gement (OPE)		
U.S Department of Homeland S	Security		
(b)(6)			
(202) 923-6143			
From: Clark, Nancy (b)(6)			
Sent: Friday, September 24, 20	21 3:52 PM		
To: Front Office Review CC (b)(6	5)		
Cc: Fauquet, Stephanie (b)(6)	ESEC-Exte	ernal Liaison <esec-< td=""><td></td></esec-<>	
(b)(6)	Clark, Nancy (b)(6)	Blackwell, Juliana	
(b)(6)	OPE_Tasking (b)(6)	CARNES, ALEXANDRA	
(b)(6)	GEER, HARLAN (b)(6)	WU, MIKE	
(b)(6) SEYLE	R-SCHMIDT, GUSTAV (b)(6)	BROO	KS,
REBECCA (b)(6)	FALLON, KATHLEEN (b)(6)		
REZMOVIC, JEFFREY (b)(6)	ULLOA, ISABELL	A (b)(6)	
O'CONNOR, KIMBERLY (b)(6)	BRAUN, JAC	COB (b)(6)	
LUGO, ALICE (b)(6)	HIMMEL, CHLOE (b)(6)	HIGGINS,	
JENNIFER (b)(6)	CALLAHAN, MARY ELLEN (b	0)(6)	
<b>Subject: SIGNIFICANT CORRESP</b>	PONDENCE REPORT: 09.24.21		

Attached for your review is today's significant correspondence report. Based on our review and standard business practices, ESEC recommends tasking these letters to the below Components, with recommended signature level and priority. We ask that counselors provide any substantive guidance on letter assignment (in bullet format), response messaging, and letter priority. OLA and OPE should provide input on priority and signature levels if incorrect. We are asking for this input by 10 am Monday morning. If no response the letter will be tasked as reflected here.

Control	Date	To	From	Summary	Counselor	Tasked	Signature	Pr
Number	Received						Level	Le

1221478 21-3704	09.24.21	S1	Sen. Hagerty	Writes to urge that, in the event of a government shutdown, to designate all border security and immigration-enforcement personnel, including CBP Border Patrol and ICE deportation officers, as essential employees who may continue to work.	N/A	СВР	FYI	N/
1221511 21-3992	09.24.21	POTUS	Judith Browne Dianis Advancement Project	Writes to offer the Administration counsel on immigration practices and policies that would benefit migrants fleeing to the U.S.	N/A	СВР	FYI	N/
1221514 21-3993	09.24.21	S1	Multi-State Attorney General's	Writes urging the Administration to be more compassionate in its handling of Haitian refugees at the border.	Immigration Team	PLCY USCIS ICE CBP	OPE	Ro
1221510 21-3706	09.24.21	S1	Sen. Moran	Writes to express my strong concerns with the ongoing and growing humanitarian and national security crisis at our southern	Immigration Team	СВР	OLA	Ur

		border.		

Please submit any guidance to ESEC-External, Stephanie Fauquet, and Juliana Blackwell, all are copied on this e-mail.

#### **Definitions of Priority:**

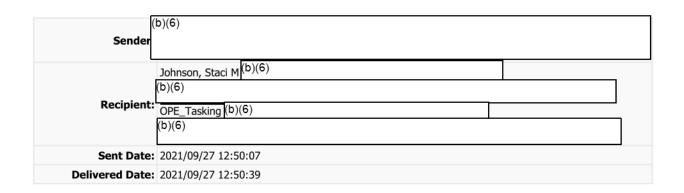
Urgent/High: 14 Business Days to Final Routine: 30 Business Days to Final

Is Interim Necessary (YES/NO)? 1 Business Day.

Regards,

Nancy Clark
Office of the Executive Secretary
Office of the Secretary
U.S. Department of Homeland Security
Desk:
(b)(6)
Cell:
(b)(6)

"ESEC: Excellent Service, Endless Commitment"





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The White House Logo

#### FOR IMMEDIATE RELEASE

September 27, 2021

#### Press Briefing by Press Secretary Jen Psaki, September 27, 2021

James S. Brady Press Briefing Room

1:48 P.M. EDT

MS. PSAKI: Hi, everyone. Happy Monday. Okay. So even as we are facing an inflection point, clearly, this week, I wanted to take the opportunity just to remind everyone, specifically in the public, of what we're talking about in these packages and why the President is fighting so hard to get his agenda forward.

So, included in these packages that the President is fighting to move forward on with leadership, we are working to lower the excruciatingly high cost of prescription drugs, which, by the way, over 80 percent of the American public supports.

We're also working to make historic investments in crumbling roads and bridges, which over 80 percent of Americans support.

We're working to pass historic tax cuts for middle-class families. Fifty million Americans would get their taxes cut -- four million small businesses.

We're working to stop our children from drinking poisoned drinking water and get every American access to high-speed Internet -- people in cities, in rural communities who haven't had access over the past several years -- which over 75 percent and 66 percent of Americans endorse, respectively.

We're working to cut the skyrocketing cost of chils- -- childcare, something that is preventing millions of women -- or hundreds of thousands of women at least, perhaps, from going back into the workforce.

And we're working to take on the devastating impacts of climate change that we're already seeing do terrible damage to our economy and national security.

So, even as we're having important debates about timelines and reconciliation processes and parliamentary processes, I just wanted to take a moment and remind everybody what this is all about.

But, Zeke, go ahead.

Q Thanks, Jen. You didn't mention the -- the end of the -- it's end of the fiscal year, the expiration of government funding, and --

MS. PSAKI: Yeah.

Q -- as well as the debit limit. Is the President making calls to Republicans? Are White House aides reaching out to Republicans to encourage them to back that CR?

MS. PSAKI: We are certainly engaged with a broad range of members and their offices about moving every component forward.

And I -- it was not an intentional oversight; I was trying to add the components of the reconciliation package and the infrastructure bill, which sometimes gets shorthanded. But I'm happy to talk about raising the debt ceiling as well or preventing government shutdown,

if useful.

Q Just on a different topic. Was the White House involved in brokering the prisoner swap between China and Canada on Friday?

MS. PSAKI: I didn't -- are you --

Q Well -- yeah. And then, also, I -- you know, does this sort of deal incentivize China to sort of unjustly seize foreign nationals as, sort of, international, geopolitical leverage?

MS. PSAKI: Well, first, we'd not referred to it in those terms. We'd refer to it as, one, an action by the Department of Justice, which is an independent Department of Justice. This is a law enforcement matter, as it relates to specifically the Huawei official who was released. So, this is a legal matter.

I would note that the President and every member of our administration, national security officials who have contact -- have had contacts with Chinese officials over the past nine months have made clear that they want to see the release of the two Michaels, and, of course, any American who is not able to leave China.

Q So the Huaw- -- so was the White House involved in the freeing of the two Michaels?

MS. PSAKI: We make the case consistently at every level -- and we have for some time now, including in the President's call with President Xi -- about the importance of these two individuals returning back to their home.

Q And the action here of deferring the charges linked to the release of the two Canadians, doesn't that create sort of an incentive structure that would give China more reason to do this sort of thing again?

MS. PSAKI: Well, I think it's important to note, and to be very clear about this: There is no link. It is not -- it is a -- we have an independent Justice Department. We can't determine how the Chinese or others manage their business over there; it's a little bit different. But we have an independent Justice Department that made independent decisions -- law enforcement decisions.

At the same time, we have made no secret about our push to have the two Michaels released. That's certainly positive news and good news.

Q And just on a different topic briefly. On the boosters -- the President got his booster minutes ago: Are White House staffers getting boosters as well? Is the White House proper considered one of those high-risk settings, like healthcare and grocery stores and the like?

MS. PSAKI: Sure. Well, the CDC, as you all know, just released this information -- or these recommendations, this guidance on Friday, and so there hasn't been a determination made.

But I will note, since you gave me the opportunity, it's pretty clear -- this is one of the reasons the President conveyed this as well -- exactly what this means: People who are 65 years and older, they can look at their vaccine cards -- if it's been more than six months and they had the Pfizer shot, they should go get another shot.

Long-term care residents and staff; people who are 18 years and older who have underlying medical conditions, including asthma, diabetes, obesity -- there are others; and those who work and live in high-risk settings, including healthcare workers, teachers, grocery store workers who had the Pfizer shot -- just look at your vaccine card -- if it's been more than six months, you should go get a shot.

Q And who's going to make that determination about the White House complex? Is that a CDC decision? Is that a White House Medical office -- a Medical Unit decision?

MS. PSAKI: We follow CDC guidelines. But, given the guidelines just came out on Friday, we're still making a determination about how it would be applied.

Go ahead.

Q Thank you. Just to piggyback on Zeke for a minute about Huawei: I just wanted to ask how you would respond to allegations from congressional Republicans that the deferred prosecution agreement for the Huawei CFO amounts to capitulation and appearament, and calls into question Biden's ability to deal with the threat from China -- that hostage-taking works with the United States, et cetera.

MS. PSAKI: It may feel foreign to them that the Department of Justice is independent, but it is independent under this administration. And this is a legal matter. It was an announcement made by the Department of Justice, and it's inappropriate for me to weigh in on that further.

What I would note, though -- because I think there was a lot wrapped up in their criticism there -- is that our policy has not changed -- our policy toward China. We're not seeking conflict. We -- it is a relationship of competition. And we're going to continue to hold the PRC

to account for its unfair economic practices, its coercive actions around the world, and its human rights abuses.

And we will continue to do that in partnership with our allies around the world.

We will also continue to engage with the PRC to keep channels of communication open to responsibly manage the competition and discuss potential areas of interest where those align.

So, there is absolutely zero impact. No one should read it as an impact on our substantive policy. This is a legal matter and a legal decision.

Q Just to quickly follow up: Did President Biden discuss Huawei on his recent call with President Xi?

MS. PSAKI: He raised the indiv- -- the two individuals -- the two Michaels, who have been released. Very positive news.

It should not come as a surprise that President Xi raised the Huawei official. But again, there was no negatiation [negotiation] on this call. This -- these two leaders raised the cases of these individuals, but there was no negotiation about it. It was President Biden raising and pressing again for the release of these two Michaels, as is something that happens in every engagement we do with the Chinese -- or had, up to this point in time.

Go ahead.

Q Jen, you opened by talking about how popular the President's agenda is, as reflected in these bills -- prescription drugs and childcare and climate change. If the President's agenda is so popular with the American people, why can't he find the votes to get it through Congress? And why hasn't he rallied public support, really, to get this done?

MS. PSAKI: Well, I would say first, if public support is right around 80 percent for most of the initiatives, then public support has been rallied. As it --

O But (inaudible)?

MS. PSAKI: Well, as it relates to the politics of Washington, which -- sometimes the ZIP Code we're all living in here operates disconnected from where the American public is; I think we can all evaluate that or have seen that happen over time.

I noted that because it's important for people to understand: This is what the American people want. Roads, rails, bridges -- they are not Republican or Democratic. They are -- they are initiatives. They are improvements the American people want.

People want improvements to childcare. They want their costs cut. They want the tax system more fair. So, our ZIP Code here is sometimes a little out of whack with what the public wants. That's why I noted those pieces.

I would also say, though, that what we're trying to do is hard. The President knows that. Nothing is guaranteed. And we are working -- as you just heard him say, he's an optimist by nature, but he's going to work this afternoon, tonight, tomorrow to do everything he can to engage with Democrats, with people with a range of positions to get this agenda forward -- moved forward.

Q The Democrats are obviously in control of the government. So, it's not the ZIP Code; it's the party, and he's the leader of the party.

What can't he --

MS. PSAKI: Well, you ask -- you asked me, first, about the popularity of these initiatives and why there weren't more votes, broadly -- which is a good question, but that's what I was answering to you.

Look, I would again say that what we know is that, among Democrats, there is broad agreement about the need to cut costs for childcare, the need to invest in roads and rails and bridges, make us more competitive, make our tax system more fair, address the climate crisis. There are disagreements around what the size of this package looks like. We understand that. That's what the discussion is, in part, about.

Again, he's not naïve about how challenging this is. He's been through a few of these rodeos before. And so, what we're focused on right now is working in lockstep with leadership to move the agenda forward and get it over the finish line.

Q And just one question on the President's booster and this -- this display you have here. Is it partly a concern that, after all the back-and-forth on the advice and guidance from the government, people are confused about the booster and maybe even -- now even more doubtful about it?

MS. PSAKI: Well, I would say the reason we did this chart is because sometimes it's self-

perpetuating. If everybody here is saying it's confusing, then people are going to think it's confusing.

And so, what I'm trying to do is alleviate the confusion -- right? -- and explain: These are exactly the categories. Anyone who's had a Pfizer shot six months ago, go get another shot. If you took Moderna and -- or J&J -- they're still considering that data. Don't get the shot yet. Not approved yet.

So, we want to do everything we can to alleviate any confusion, answer questions people have.

The President went and got his shot -- his booster shot on camera to make clear: It's safe, it's effective, it's something you should do if you're in one of these categories.

Go ahead.

Q Has Senator Manchin or Senator Sinema made clear to the President what their specific demands are for this reconciliation package?

MS. PSAKI: I certainly understand your question, Kaitlan, but I'm not going to speak on their behalf about what they -- where they stand at this point in time.

Q Have they told the President, though, what their price tag is in the --

MS. PSAKI: I will let them speak for what their -- what their points of view are. There have been ongoing discussions. We've been in close contact with them, as well as a range of members, about the path forward.

Q Without saying what they are, you can't just say if they've actually told the President, "Here is where we will -- what we want"?

MS. PSAKI: We'll let them speak for what conversations they've had privately. We're not going to provide more detail from here.

Q Okay. And what is your understanding on what happens to the CDC and the FDA's work on the pandemic if the government loses funding this week?

MS. PSAKI: Well, let me first say that it is never a good thing for the government to shut down, and that is why we are doing everything we can to prevent that from happening.

Because a great deal of public health, if not all of it -- most of the public health work would be exempted from a government shutdown, but it -- that doesn't change the fact that having services shut down, staffing cut in different agencies is not in the interests of addressing any crisis we face, including the pandemic.

Q So, will they continue to work at 100 percent when it comes to the pandemic response, or what is the preparation for that?

MS. PSAKI: Well, we, of course -- as I -- as I noted and confirmed last week, we had begun making contingency plans -- as every government does, as every Office of Management and Budget does -- to plan.

But, again, public health officials, for the most part, would be exempt.

But government shutdowns also are hugely costly. They would include the cutting of staff at a range of agencies; that's not a positive thing, obviously.

Go ahead.

Q Thank you, Jen. President Biden mentioned that this evening he'd be meeting with Democrats, as I'm sure he'll be doing all week.

MS. PSAKI: Yeah.

Q Is there anything you can share about --

(Cell phones rings.) It's not me this time.

MS. PSAKI: It's okay. (Laughter.)

Q Anything you can share about --

MS. PSAKI: No one even remembered that until you brought it up. There you go. (Laughter.)

Q -- about who he's meeting with, whether those meetings will be in person or on the phone?

MS. PSAKI: Sure. I understand your interest. Let me just tell you that, one, we all ate our Wheaties this morning. I expect that's going to be the breakfast all week. And things are constantly changing every day and certainly even every hour.

And we are evaluating if the President has some space in his schedule to make calls, to bring people down here. We're not that far from the Hill.

So, we will keep you abreast as these details are finalized, but we're working through that now. And I expect that will be the case for the coming days.

Q And then, publicly, progressives -- like Congresswoman Jayapal, Senator Sanders -- have said they are open to hearing what somebody wants to cut from the reconciliation package when asked about a figure lower than 3.5. Does the White House agree that something has to go, or can all of the proposals remain but at a smaller scale?

MS. PSAKI: Look, I think this is exactly part of the discussion that's being had between members of all -- all part- -- not -- not of all parties, I should say -- but many members in the Democratic Party right now. And there are a range of options, but I'm just not going to outline those or detail those from here.

Q And then just one more on the maccine [sic] -- vaccine mandate.

MS. PSAKI: Sure.

Q The President said he's going to Chicago on Wednesday --

MS. PSAKI: Yep.

Q -- to encourage more businesses. But the last I checked, the OSHA rule was still in the rulemaking process.

MS. PSAKI: Yeah.

Q Do you have any update on when that will be done so businesses can implement it, and when you think that will happen?

MS. PSAKI: Well, there are a number of businesses that have already implemented it, even before -- already implemented, I should say, their own requirements, even before the OSHA rulemaking had happened, so -- and some of those businesses are in Chicago. That -- and United is an example, obviously. They implemented a vaccine mandate several weeks ago, and they now have -- had a huge increase in the number of employees who've been vaccinated.

So, what the President is going to continue to do is lift up private sector companies and businesses that have already put in place mandates, even as the rulemaking process is ongoing.

Q So, there's no update on a timeline?

MS. PSAKI: It's up -- I would add -- I would point you to OSHA. We knew it would take a little bit of time, given there are some very understandable and good questions by the business community. And we want to ensure -- they want to ensure there's clarity when they put out the rules.

But businesses can employ it. It's become more popular. It's been very successful in the vast, vast majority of businesses that have implemented mandates.

Q Thanks, Jen.

Go ahead.

Q What leverage do you believe the President has -- in political or in terms of specific pieces of the legislation, what leverage does the President have with Democrats?

MS. PSAKI: In terms of getting his -- the agenda forward?

Well, I would say, one, it's a hugely popular package. Each item in itself -- that's why I went through some of the specifics here -- has broad support among the American public. But I would also say that if you talk to most Democrats who are in Congress, most certainly most Democrats in the country, there's not disagreement about the fundamentals of what we're trying to achieve. And there is agreement that we need to address the climate crisis; that we need to cut costs for childcare, for college; that we need to make it easier for women to rejoin the workforce; we need to rebuild and modernize our infrastructure. So, there's not -- there's agreement on that.

There's a basic discussion that needs to happen, or is ongoing -- we're right in the weeds of it now -- on what the size of the package looks like.

But I will also note -- and we've done this a little bit over the past couple days -- but that this package -- the reconciliation package would cost zero dollars.

So, what I'm saying -- what I -- what we are -- the case we're making here is that there needs to be agreement on the different components. There's broad agreement on the goals. And then there needs to be agreement on what the revenue payfors are. There's a range of options of revenue payfors. Clearly, the President has laid out the different areas that he would like to invest in, and all of that needs to come together. That's where -- and we're in the weeds on now.

Q Is it a political problem for the President that he's having difficulty bringing together his own party?

MS. PSAKI: I -- first of all, the -- we're in the process now. The President, again, doesn't underestimate how challenging getting all of these pieces of legislation forward is. We're in the middle of it right now.

And there is broad agreement about the different components of his agenda. So, what he's working to do now is unify the party around the path forward. That's -- that's what we're in the middle of. I don't think -- it's a little too early to evaluate how it's going to end.

Q He said it could go into next week. That's your expectation?

MS. PSAKI: We'll see.

Go ahead. I'll come back to you, Jen.

Q Jen, there's some reporting today that the White House and Democrats are considering or at least looking at means testing for some of the items in the reconciliation bill. Is that something that you would consider?

MS. PSAKI: Well, it depends on how you define what that exactly is, right? There are -- there are inquom [sic] -- income requirements for a range of different components of the President's agenda. Right?

Q Well, for, say, a community college, for example. That was billed as something that would be available to all Americans.

MS. PSAKI: Right, but I -- and I'm not going to negotiate all the specifics from here. I'm just going to give you just a broad un- -- broad case understanding of how we've already approached things to date.

It depends on how you're describing exactly what that is. Right? We don't give the Child Tax Credit -- every family is not eligible for the Child Tax Credit in the country. Every person is not eligible for the Earned Income Tax Credit. There are income requirements for a variety of components.

So, there are some who have proposed that. Obviously, the President -- there are components, as you can see from his past agenda, where he has -- there has been income tops on some components of his agenda, but beyond that there are ongoing discussions right now.

Q But you're ruling out that could be added to some items that, as proposed, did not have income.

MS. PSAKI: Well, again, I think you should look at the President's past proposals and what he has supported in the past -- where there has been prioritization in the past, in some areas, for components of his agenda that made it not elig- -- made it have an income cap so that we could expand the scope of who could -- who could get it, without it being to the highest income.

Q And just one more. As he sat down with Prime Minister Modi last week, the President said that the Indian press is "better behaved" than the U.S. press, and then he advised him not to take questions. Can you explain why the American President was criticizing U.S. reporters in that setting?

MS. PSAKI: Well, I would note, first, that he took questions on Friday and he took questions again today.

And I think what he said is that they're not always "on point." Now, I know that isn't something that anyone wants to hear in here. But what I think he was conveying is, you know, today, he might want to talk about COVID vaccines; some of the questions were about that. He might want to talk about -- and some of the questions are not always about the topic he's talking about in that day. I don't think it was meant to be a hard cut at the members of the media -- people he has taken questions from today and on Friday as well.

Go ahead.

Q It happened that he was sitting next to the Prime Minister of India, the world's largest democracy, when he said that. It also followed the incident on Wednesday when he was sitting next to the Prime Minister of Great Britain. Is the President reticent to take questions when he's sitting next to a foreign leader in the Oval Office? Can we expect him to do that in

the future?

MS. PSAKI: Steve, he took questions earlier that day, on Friday.

Q Yes --

MS. PSAKI: He'd already taken questions that day. I think that was the context of his comments.

Q But, obviously, again, the question was --

MS. PSAKI: And he has taken questions standing next to a foreign leader many, many times in the past and will continue to.

Q Good. I want to ask you about what Republicans are pointing to in the analysis from the Joint Committee on Taxation. They say, according to -- if I've read the chart correctly, more than 16 percent of taxpayers would see their taxes increase under the bill that's approved by the House Ways and Means Committee. Will the President sign that bill if -- as if -- it is coming out of that committee? Or will he insist on the changes so that he will maintain his commitment that taxes won't go up on people making \$400,000 a year?

MS. PSAKI: I have not looked at the document or the report that you have put out. Obviously, the President -- or that you have referenced, I should say -- that the Republicans put out.

Obviously, the President's commitment remains not raising taxes for anyone making less than \$400,000 a year. There are some -- and I'm not sure if this is the case in this report -- who argue that, in the past, companies have passed on these costs to consumers. I'm not sure if that's the argument being made in this report. We feel that that's unfair and absurd, and the American people would not stand for that.

But I will take a closer look at this report and get you a more substantive response.

Go ahead, Jacqui.

Q Thanks Jen. Going back to the Friday meeting with the Prime Minister. The President said that the Indian press was "better behaved" than the U.S. press, but the Indian press is ranked 142nd in the world, according to Reporters Without Borders, for press freedoms. How does he say that about the U.S. press compared to the Indian press?

MS. PSAKI: Well, I would just say to you that having now worked for the President -- serving in this role for nine months, having seen that he's taking questions from the press more than 140 times, including today and Friday -- that he certainly respects the role of the press, the role of the freedom of pre- -- free press. He -- we ensure that we have press with us, of course, when we travel; that we have press with us for sprays in foreign -- in foreign capitals; and we will continue to. And I think that should speak to his commitment to freedom of press around the world.

Q You haven't opened up the East Room, though.

Q I want to go back to the border. On Friday, the Secretary of Homeland Security said that 12,000 migrants were released into the U.S. to have their cases heard by an immigration judge; 2,000 were expelled via flights. But we now have another group of migrants that has crossed the southern border of Mexico, could end up on the U.S. southern border within the next month or so. So, does the White House believe the message of deterrence -- "The border is closed; do not come" -- is working?

MS. PSAKI: Well, Jacqui, the White House believes that -- and the President believes that our immigration system is incredibly broken. And we saw a surge -- we've certainly seen a surge of migrants come to the border recently. We saw a surge back in 2019. We saw a surge back in 2014.

Until we fix the system and we have a more effective and operational immigration system, until we have an asylum processing system that works at the border, we're going to continue to see cyclical challenges like this. And we've seen them over Dem- -- across Democratic and Republican Presidents.

So, our objective continues to be not just addressing, obviously, the challenges we saw in Del Rio last week, but working with Congress to get immigration reform passed so we can fix the broken system and ensure we can have a better operational process moving forward.

Q But how is that going to get fixed when the immigration bill has been, you know, stalled in Congress since the President took office? It's been tough to even get something like roads and bridges passed; that's coming to a head this week. How is that going to work when there's also this backlog of 1.3 million cases that are waiting to be heard? And, on average, it's taking two and a half years for cases to be processed from the notice to appear to the case completion. That's almost double from a year ago.

So what tools is the President going to use? Because Congress is very slow right now.

MS. PSAKI: Well, we would argue that -- for all of those Republicans who are standing at the border and giving speeches about how broken the system is: Why don't you join us and be a part of the solution instead of relying on speeches?

Because we can work together and get immigration reform passed and make the system work and make it operational. We can have border restrictions that make sense. We can have a humane system that ensures that people can apply for asylum in an equitable way. That's something -- we all agree the system is broken. I think the question is: Who's going to work with us to get changes done to make it better?

Q Republicans are saying that a major reason that this bill can't move is because there's not enough border security provisions in it. Is the President going to bolster border security in order to pass immigration reform?

MS. PSAKI: If Republicans are eager to have a conversation about comprehensive immigration reform, we're happy to have that conversation. We haven't seen any willingness or appetite to do that; all we've seen is speeches and talking points to date.

Go ahead.

Q Thanks, Jen. Just to go back to the Huawei case for a second. You said there is no link between that and the release of the two Michaels, but China has long linked those two things. And given her release and the timing of their release -- and it was a longstanding ask from the Chinese side -- how do you communicate clearly that it wasn't a concession to them?

MS. PSAKI: Well, our system clearly works differently from the Chinese system. We understand that. How we communicate it clearly is to reiterate that this was a legal decision made by the Department of Justice. They can speak to the reasoning. They can speak to their decision-making process.

But I would also reiterate that we are still going to -- we are still pleased to see, of course, the release of the two Michaels -- something we have been pressing for, as our neighbors to the north have been pressing for and others around the world, for some time.

Our Justice Department is independent, they make independent legal decisions, and we will continue to reiterate that.

I would also say that there has been some assessment that this means a change in our China

policy. That is absolutely not the case. This was a legal decision. Our policy and our approach to policy -- our intention to hold China to account for its unfair economic practices, its coercive actions around the world, hold it to account on human rights abuses -- has not changed.

Okay. Go ahead.

Q Thanks, Jen. In all these calls that are happening this week with Congress, I was just wondering: How much is the President still, kind of, in a listening mode, listening to what members want -- versus as a leader of the party, you know, kind of, in directing the members of the party?

I mean, you know -- kind of piggybacking on Kelly's question about using leverage as President of the United States to force them, maybe, a bit to get on board with his agenda.

MS. PSAKI: I don't know if you've met many senators; they're not going to be forced to do anything that's not in their interest.

So, I understand there's a little bit of that churn out there, but the President has been at this a long time -- 36 years in the Senate, 8 years as Vice President. He's been pretty effective to date at moving legislation forward, including when there was skepticism about his ability to get that done.

As I've said many times, but it's just worth reiterating, he is not -- none of us -- he is not naïve about the challenge here and how challenging this is to get these two big pieces and historic pieces of legislation across the finish line.

So, yes, the conversations are not just about him silently listening; I can assure you all of that. He is not a wallflower. He is engaging in conversations. He's having discussions with leaders. He's looking to chart a unifying path forward.

And there's a give-and-take and a back-and-forth in those conversations, absolutely. He's working to help unify the caucus to get to a conclusive outcome here.

Q If I could just ask a follow-up -- not a follow-up, pardon me -- on a different subject, about China: Bloomberg actually is reporting about a U.S.-led competitor to China's Belt and Road. Can you address that? Is the United States working on an alternative to Belt and Road aside from what it is doing with Europe? A U.S.-based --

MS. PSAKI: Aside from Build Back Better World?

Q Aside the Build Back Better World. And how would that work?

And is the United States, is the White House looking for projects in Latin America to do this?

MS. PSAKI: It's a great question. Obviously, Build Back Better World I reference because it is an initiative that, you know, obviously, we worked with the G7 and other leaders to begin to implement around the world and build that infrastructure around the world.

I'd have to check with our team and see. I have -- not that I am aware of, but I will check and see if there's anything more to report on that.

Q Thank you, Jen. In New York State, there's an anticipated shortage of healthcare workers due to tens of thousands of them failing to comply with strict state vaccine mandates.

I'm wondering if the Biden administration is learning anything from these New York mandates as it's drawing up its own federal version of them and if there's any surprise about the number of people who haven't complied and haven't been vaccinated.

MS. PSAKI: So, as it relates to New York: One, we are tracking that a number of states -- New York is one of them -- are beginning to implement -- as they're beginning to implement requirements, they're taking steps to work with healthcare systems to ensure that they have alternatives that they can backfill as needed. And that certainly is -- is something we support that some states, like New York, are doing.

I would note that when this decision writ large was made -- and this was the reason we did it on a federal level, right? -- it was because healthcare workers who've been on the frontlines of this pandemic for a year and a half now were feeling at risk for their health, for their lives, for their children's lives. And also it was creating a great deal, not -- a bit of a lesser concern, but one for hospital associations -- for disruptions of workers, right? People were having to take off sick time and even -- and even worse, of course.

So, this was a step that was taken in order to address that -- to create certainty for these healthcare workers and also these systems.

We have seen in a number of places around the country -- Methodist Hospital in Houston, which is one of the first organizations to implement a vaccine requirement -- that they lost only 153 out of 25,000 employees. That means -- of the implementation of the vaccine

mandate, I should say. That means less than 1 percent quit over a vaccine requirement.

And new employment data out of Maine showed that only 65 people out of 33,000 healthcare workers quit their jobs over a vaccine requirement.

Henry Ford Health System in Detroit went from 68 percent vaccinated to 98 percent.

So, the point is: We're seeing in a lot of places that this is working, it's effective, it's creating more certainty and protection in their workforces. There are places where they are contingency planning to ensure they're backfilling. We certainly support that as well. We stay in touch with them about the steps that they're taking.

But we still continue to believe that putting in place these mandates for businesses over 100 workers is something that is a positive step for the workforce, for the country, and for a lot of these businesses, as these business leaders can attest to as well.

Q But is there anything, sort of, special about the New York rules -- I mean, for example, there's not a religious exemption even there -- that the Biden administration might be looking at and thinking, "This might be a little bit too strict for what we would want to do nationally"?

Because it is a much bigger -- I mean, and to your point, most of those places that you mentioned are having tiny, tiny, sort of, like, you know, amounts of people leaving. But New York seems to be an exception.

MS. PSAKI: Sure. I know that, obviously, OSHA and -- as they're working to do the rulemaking that Weijia asked about earlier, they're looking at a range of ways to make this as efficient, as clear for businesses as humanly possible.

We've talked a little bit about the expectation of a -- of an exemption for -- a religious exemption, which is something, certainly, they'll look at. And I'm sure they will look at how it's applied to different health systems across the country, as well as businesses and how they have applied it across the country in the private sector, where it's already been implemented as well.

So, they'll look at all of that. Their objective is to make this clear. But I think it's also important to note that -- that, in the vast majority of places, it's actually been quite effective. There's been a very, very small percentage of people who have left the workforce as it's been mandated.

Q And then just on one other topic. There's a group of about 40 Americans who are still alive from the Iranian hostage crisis, who were supposed to be paid from a fund that Congress approved. Vice President -- President Biden was Vice President at the time that this law was passed. This money has been depleted, and I just wanted to see if the President supports rewriting this law at all to cover these individuals who didn't get their due and whether he believes justice has been done by these -- by these individuals.

MS. PSAKI: It's a good question. I know you guys have followed this closely from your out---from the Post. I'll have to check with our team -- our legislative team and just see, kind of, where we stand with that. And I'm -- I'll talk to him about it, too.

Go ahead.

Q Back on the Meng release for a moment. So, the President spoke, Jen, with President Xi, I think, on September 9th.

MS. PSAKI: Mm-hmm.

Q The agreement that ultimately led to Ms. Meng's release was about 10 days later. Was he aware at the time, even if he did not discuss it with President Xi, about what the status of the discussions were?

MS. PSAKI: In terms of the Department of Justice?

Q Yeah.

MS. PSAKI: I don't have any more detail on that.

Q So we don't -- we don't know whether he -- do you know when he first learned that there was --

MS. PSAKI: I just don't -- I'm not -- I'm not trying to be cute with you. I don't have any more detail on it. I'm happy to check if there's more I can convey.

Q Okay.

A second question on all of this. You said that it wouldn't have any effect on our overall China policy. We haven't heard the President very much, during the time that he's been in office,

about Huawei itself.

And obviously, part of the effort here in reaching this agreement was to get a statement that would help with the criminal case against Huawei. How does the President assess that the campaign against Huawei is going right now?

MS. PSAKI: Well, I have not spoken with him about his view on the campaign against Huawei. What I will tell you and just reiterate is that this was a legal decision. It does not change our view, this administration's view, or his view as it relates to our concerns about economic practices, coercive actions, and, in fact, the actions that were admitted to by this individual. I mean those type of actions.

So, it does not change our policy. It does not change our approach to policy. It does not change our concerns with some of the practices we've seen from -- from the government and leaders within China as it relates to economic action.

Q I'm trying to get at something a little bit different, which is: Does the President believe that the initiatives you have underway to contain Huawei spread through Latin America, Africa, elsewhere are actually yielding results in the first nine months of his presidency?

You've seen them win some big contracts. You've also seen them have a very difficult time getting a lot of the semiconductors and other parts they need.

MS. PSAKI: I don't -- I'd have to check with our team on an assessment of that, David. It's a totally fair question.

Q And a last question for you, which has to do with Iran. The foreign minister of Iran -- the new foreign minister was in New York last week. He said that they were less interested in the details of what a revived JCPOA agreement said and much more interested in making sure that they got the sense of all the benefits from sanctions relief that they believe, actually back to President Obama, they did not, even after the agreement was signed.

Is President Biden's view, at this point, that when you -- if you do get back into the agreement, that Iran has to see more benefit than it actually got back after the 2015 agreement was reached?

MS. PSAKI: You mean receive more benefits than -- so, receive more benefits than they received back in the last administration?

Q Not on paper but in reality. The Iranian complaint, essentially, was companies were still too reluctant to do business with them.

MS. PSAKI: I think, David, where we are is we're still quite a few steps away. And so, we are eager, of course, to go back and have discussions -- diplomatic discussions in the next round of negotiations.

They may not be interested in all the details. We certainly are interested in all the details. But I just am not in a position to assess what that will look like at this point in time.

Go ahead.

Q Yeah, thanks, Jen. Does the White House have any reaction from news today that John Hinckley, who, of course, attempted to assassinate President Reagan four decades ago, will be granted unconditional release, effective next June?

MS. PSAKI: I don't have any response. I'm happy to check and see if we have one from here.

Q Okay.

MS. PSAKI: Go ahead.

Q Me?

MS. PSAKI: Go ahead.

Q Oh, thank you very much.

MS. PSAKI: Oh, sorry. I was calling on him. Go ahead. Go ahead.

Q Oh, so sorry.

MS. PSAKI: Oh, right, okay. Okay, okay. It's okay. Go ahead.

Q Today marks four weeks since the last U.S. troops left Afghanistan. And since then, the U.S. has helped at least 160 Americans and U.S. residents leave. But thousands more green card holders and at-risk Afghans remain. Does the White House think that that's an acceptable rate of getting people out? And how do you measure success?

MS. PSAKI: Well, our objective was -- at the time and continues to be -- to work with our partners in the region, including the Qataris and others in neighboring countries, to ensure there are movement of flights and that flights are back up and operational. We have seen many people depart and that, we expect and hope, will be ongoing.

We knew that we needed to take a number of steps to work with the international community to ensure there's continued pressure that the t- -- that the Taliban would abide by their commitments. And we also knew that we needed to get the flights up and going.

The flights have been up and going. And so far, we've moved some people overland. We're working with our partners in the region to continue to get more people out who want to depart.

Q Is the White House happy with how quickly things are moving?

MS. PSAKI: Our objective is to continue to make progress, and I think we're doing exactly that. And the State Department, of course, is leading this effort.

Go ahead.

Q The Education Secretary supports mandatory vaccinations for students if they're eligible for a COVID vaccine. Does the White House agree with that? Does the White House believe that all students should be vaccinated before they go to school?

MS. PSAKI: Well, we've always felt it would be up to local and district school -- school districts to make that determination. Certainly, we support more people getting vaccinated, more schools and superintendents and leaders taking steps to protect their communities. But our view is that it will continue and should continue to be up to schools and local school districts.

Q So not a federal requirement at this step?

MS. PSAKI: We have not put in place one, no.

Go ahead. Go ahead.

Q Thank you so much. So, taking you back in time to Friday, as President Biden was midmeeting with Prime Minister Modi, the Prime Minister of Pakistan took to the stage at the U.N. and delivered some scathing criticism of the U.S.'s actions in Afghanistan. And he's lamented the lack of direct engagement between himself and President Biden.

So, I was just wondering: Why hasn't the President used this aggressive diplomacy to answer that call from the Prime Minister of Pakistan to engage directly?

MS. PSAKI: To be in touch directly with the -- with the leader of Pakistan? We have been in touch at very high levels with leaders in Pakistan from the State Department, from the Department of Defense, and from other key components of the administration.

The President has not spoken with every foreign leader at this point in time; that is absolutely true. But he, of course, has a team -- an expert team deployed to do exactly that.

So I would say that we are continuing to work together and work on initiatives where we can, make clear where we have concern, but I wouldn't overread into a leader-to-leader call in that particular regard. We have high-level engagement from the State Department, Defense Department, and others at this point.

Q Could there be a call at some point soon?

MS. PSAKI: I don't have anything to predict at this point in time. If they do a call, we will of course read it out to all of you.

Go ahead, Yamiche.

Q Thanks, Jen. A question on the pressure the President is facing. The President said today that "victory" is at stake this week. Can you explain more about what he meant there, and also what pressure is he feeling as Democrats face this sort of intense legislative week?

MS. PSAKI: Well, I would say he said that at the end of several questions -- just to give the full context -- when it was like, "What is at stake?" And he said, "Victory is at stake." I don't think he said it quite exactly in the same tone that you conveyed, which is okay.

But, look, the President is very committed to this agenda. He laid it out back in the spring. He thinks that it's far past time to rebuild our roads, rails, and bridges. He thinks it is far past time to ensure we are doing what's needed to address the climate crisis. He thinks it's far past time to lower costs for working families -- whether it's childcare, the cost of college, elder care -- that are impacting millions of families across the country.

That's what the stakes are. The stakes are for the American people. That's what he's focused

on. We are, of course, going to continue to work with Democratic leadership and our objective is to win both of these votes and get this agenda moved forward.

Q And I know you're not going to negotiate from the podium, but can you say anything about what the President's message is to his own party as he tries to bring together progressives and moderates?

MS. PSAKI: His message is: Let's -- let's get together, let's get to work, and let's get this done for the American people.

Q Can I ask you one more -- one quick question --

MS. PSAKI: Yeah.

Q -- on the Haitian migrant issue?

MS. PSAKI: Sure.

Q Can you talk a bit more about the need to continue to use Title 42 and why that's so important to this administration?

And also, overall, with the Border Patrol Horse Patrols, they've been using those horses for a very long time. Is the Biden administration going to continue to use those horse patrols throughout the rest of the country? I know they're temporarily suspended in Texas -- or Del Rio, Texas, rather.

MS. PSAKI: They are temporarily suspended in Del Rio, Texas. I think what Secretary Mayorkas talked about a bit when he was here on Friday is the fact that when these horse patrols are used effectively, they often can help people who are in distress. That's something they do. They can find people. There are -- there is a reason that these horse patrols have been in place and continue to be in place in some parts across the country.

Of course, our Department of Homeland Security will continue to look at and assess, especially as the investigation concludes, what that looks like. They've been suspended in Del Rio, Texas. That was a step in response, of course, directly to those horrific photos.

But beyond that, I think it's important to note that, as the Secretary said, the vast majority of the Border Patrol and the Horse Patrol are doing their job and they're doing their job effectively.

Of course we are going to assess and we are going to call out when we see occasions -- as we did with the photos and the video last week -- that don't meet our bar; that that bring out strong emotions, for good reason, from people in this -- in this administration and around the American public.

Q And you clarified about the "victory is at stake." Could you just explain a little bit more what you mean by that? I just want to make sure that the context is clear when the President -- when the President said, "Victory is at stake," what you see him as meaning there.

MS. PSAKI: He means victory for the American people: victory in getting -- lowering the cost of childcare; lowering the cost of elder care; rebuilding our roads, rails, and bridges; becoming more competitive with China; investing in our climate crisis.

Q So not victory for his agenda, per se? Not victory for --

MS. PSAKI: Well, that is his agenda.

Q Okay.

MS. PSAKI: They're mutually the same.

Q Gotcha.

MS. PSAKI: Go ahead.

Q Thank you, Jen. Does the President have a specific position on the Uyghur Forced Labor Prevention Act that passed the Senate and is awaiting consideration in the House?

And then, in a recent interview with Bloomberg, John Kerry seemed to suggest that, in talks with the Chinese, this administration sees human rights and climate change as two separate issues. He said, "Yes, we have issues, a number of different issues. But first and foremost, this planet must be protected." Is it the President's view that climate change is first and foremost over, you know, a host of other issues?

MS. PSAKI: Well, to be fair, I think what the Secretary was conveying is what I just conveyed about our China policies: that we are going to continue to speak out when we have -- where we have concerns, whether it's their economic approach, whether it's human rights issues, which we will raise privately and we will also raise publicly. But we will also look to work with

the Chinese on areas where we can, and, obviously, climate is one of them.

Q And on the -- specifically on the Uyghur Forced Labor Prevention Act, does the President have a position?

MS. PSAKI: I will check with our legislative team. Obviously, he's spoken out about his concerns about the treatment of Uyghurs in the past, but let me check on the specific piece of legislation.

Q And then you touched on this, but I'm wondering, you know, the El Paso Times has walked back their claim that border agents were using whips to deter Haitian migrants. This is kind of a controversy; some people are weighing what is a whip versus what is a rein. And the El Paso Times put out a clarification saying, "It was not an actual whip." Does that change anything for the administration, in light of the statements that were made last week?

MS. PSAKI: I don't think anyone could look at those photos and think that was appropriate action or behavior or something that should be accepted within our administration.

There's an investigation. That's ongoing. We'll let that play out. But our reaction to the photos has not changed.

Q Thank you, Jen.

MS. PSAKI: Thank you, everyone.

Q Thank you, Jen.

Q I have a question. On the polling -- the President's polling continues to collapse --

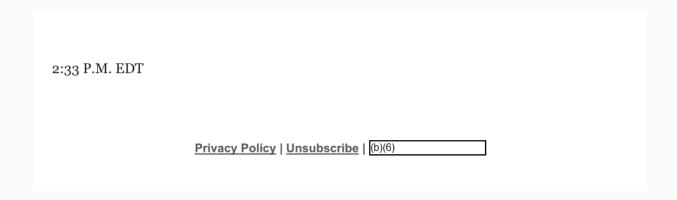
MS. PSAKI: Emerald, I know you like to shout at the end. Next time, we'll do it during the briefing.

Q Well, if you'd call on me --

MS. PSAKI: Thanks, everyone.

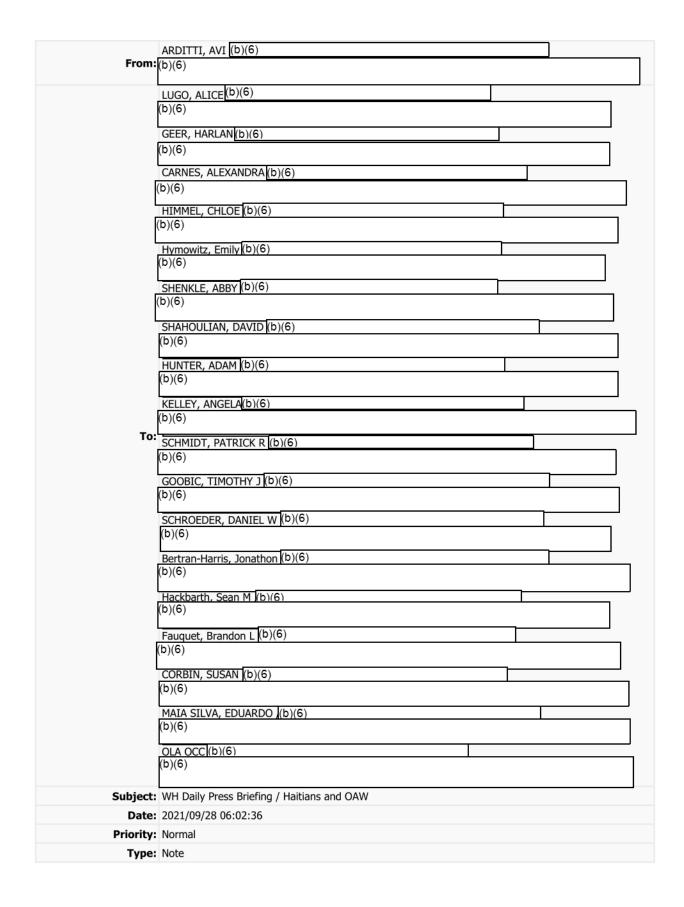
Q -- I wouldn't, along with a lot of other people, Jen.

MS. PSAKI: Thank you so much.



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### September 27, 2021

Q I want to go back to the border. On Friday, the Secretary of Homeland Security said that 12,000 migrants were released into the U.S. to have their cases heard by an immigration judge; 2,000 were expelled via flights. But we now have another group of migrants that has crossed the southern border of Mexico, could end up on the U.S. southern border within the next month or so. So, does the White House believe the message of deterrence -- "The border is closed; do not come" -- is working? MS. PSAKI: Well, Jacqui, the White House believes that -- and the President believes that our immigration system is incredibly broken. And we saw a surge -- we've certainly seen a surge of migrants come to the border recently. We saw a surge back in 2019. We saw a surge back in 2014. Until we fix the system and we have a more effective and operational immigration system, until we have an asylum processing system that works at the border, we're going to continue to see cyclical challenges like this. And we've seen them over Dem- -- across Democratic and Republican Presidents.

So, our objective continues to be not just addressing, obviously, the challenges we saw in Del Rio last week, but working with Congress to get immigration reform passed so we can fix the broken system and ensure we can have a better operational process moving forward.

Q But how is that going to get fixed when the immigration bill has been, you know, stalled in Congress since the President took office? It's been tough to even get something like roads and bridges passed; that's coming to a head this week. How is that going to work when there's also this backlog of 1.3 million cases that are waiting to be heard? And, on average, it's taking two and a half years for cases to be processed from the notice to appear to the case completion. That's almost double from a year ago. So what tools is the President going to use? Because Congress is very slow right now.

MS. PSAKI: Well, we would argue that -- for all of those Republicans who are standing at the border and giving speeches about how broken the system is: Why don't you join us and be a part of the solution instead of relying on speeches?

Because we can work together and get immigration reform passed and make the system work and make it operational. We can have border restrictions that make sense. We can have a humane system that ensures that people can apply for asylum in an equitable way. That's something -- we all agree the system is broken. I think the question is: Who's going to work with us to get changes done to make it better?

Q Republicans are saying that a major reason that this bill can't move is because there's not enough border security provisions in it. Is the President going to bolster border security in order to pass immigration reform?

MS. PSAKI: If Republicans are eager to have a conversation about comprehensive immigration reform, we're happy to have that conversation. We haven't seen any willingness or appetite to do that; all we've seen is speeches and talking points to date.

...

Q Today marks four weeks since the last U.S. troops left Afghanistan. And since then, the U.S. has helped at least 160 Americans and U.S. residents leave. But thousands more green card holders and at-risk Afghans remain. Does the White House think that that's an acceptable rate of getting people out? And how do you measure success?

MS. PSAKI: Well, our objective was -- at the time and continues to be -- to work with our partners in the region, including the Qataris and others in neighboring countries, to ensure there are movement of

flights and that flights are back up and operational. We have seen many people depart and that, we expect and hope, will be ongoing.

We knew that we needed to take a number of steps to work with the international community to ensure there's continued pressure that the t--- that the Taliban would abide by their commitments. And we also knew that we needed to get the flights up and going.

The flights have been up and going. And so far, we've moved some people overland. We're working with our partners in the region to continue to get more people out who want to depart.

Q Is the White House happy with how quickly things are moving?

MS. PSAKI: Our objective is to continue to make progress, and I think we're doing exactly that. And the State Department, of course, is leading this effort.

...

Q -- on the Haitian migrant issue?

MS. PSAKI: Sure.

Q Can you talk a bit more about the need to continue to use Title 42 and why that's so important to this administration?

And also, overall, with the Border Patrol Horse Patrols, they've been using those horses for a very long time. Is the Biden administration going to continue to use those horse patrols throughout the rest of the country? I know they're temporarily suspended in Texas -- or Del Rio, Texas, rather.

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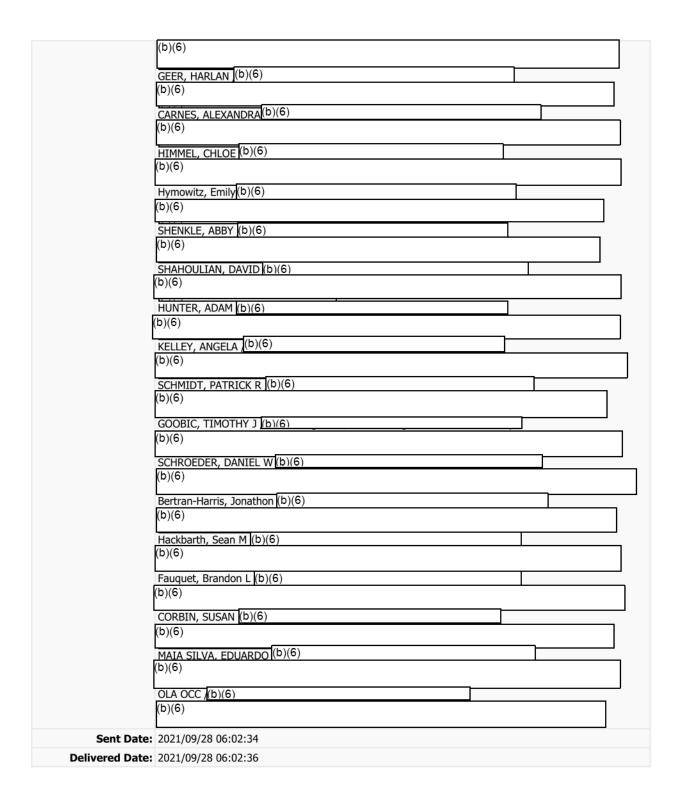
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Q And then you touched on this, but I'm wondering, you know, the El Paso Times has walked back their claim that border agents were using whips to deter Haitian migrants. This is kind of a controversy; some people are weighing what is a whip versus what is a rein. And the El Paso Times put out a clarification saying, "It was not an actual whip." Does that change anything for the administration, in light of the statements that were made last week?

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	KELLEY, ANGELA (b)(6)
То:	(b)(6)
Subject:	Black Leaders Call On Biden Administration to End Racist, Inhumane Treatment of Black Immigrants
Date:	2021/09/28 11:14:36
Priority:	Normal
Туре:	Note

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## AMERICA'S **VOICE**

For Immediate Release: September 28, 2021 Contact: Erica Jordan a (b)(6) or (b)(6)

### Black Leaders Call On Biden Administration to End Racist, Inhumane Treatment of Black Immigrants

Link: https://bit.ly/3ibINmk

Washington, DC - Ongoing deportations to a nation engulfed in political violence and despair. Photos of Border Patrol officers on horse treating Haitians the way plantation overseers used to treat slaves. Outrage at an administration that claims to have the backs of Black people.

Let us listen to spokespeople who are themselves Haitians, Black, immigrants or asylum seekers. They offer deep insights on the treatment of Black migrants and refugees.

### Guerline Jozef of Haitian Bridge Alliance in The Daily Beast:

"Black asylum seekers need compassion, not an endless cycle of inhumane and careless treatment...As the world is watching, the administration is deporting 1,000 people based on a system of cruelty, sadism and oppression despite supposed outrage over men on horseback whipping Black children and families."

Patrice Lawrence, co-director of UndocuBlack Network, has a column published by CNN, An outrage at America's border:

"A human-rights catastrophe has taken shape on the border in Texas -- and it has happened on the Biden administration's watch... Joe Biden's administration is making things worse by refusing to process these asylum seekers, instead herding hundreds of them onto planes and back into harm's way in Haiti. There is no moral justification for this behavior. First, the facts. Haitians, like all people, have a legal right to seek asylum in the United States. Although asylum seekers may present themselves at an official port of entry, they are not required to do so."

## The Black Alliance for Just Immigration (BAJI) helped lead a letter from <u>Black Civil Rights leaders</u> on Sept 22. and also issued their own <u>statement on Sept.</u> 17 flagging the history of disparate treatment for Haitian and Black migrants:

"For years, under different administrations (Obama, Trump and now Biden), BAJI has warned of a human rights catastrophe of this nature. The Biden administration has offered that they are different from past administrations. They have claimed a racial justice lens; and yet here we are. The US has the resources to treat asylum seekers with compassion and dignity. Today for Citizenship Day, Biden praised immigrants because they have 'courage' to leave behind everything that they know to pursue the possibilities of a better life in the US. As Black people, we know the complexities of existing on this land, and the elusive freedom and citizenship that the US promises, but everyday we dream and work toward a different reality."

## The Grio reports on a <u>letter</u> sent to DHS Office for Civil Rights and Civil Liberties from Haitian Bridge Alliance, The UndocuBlack Network, Black Alliance for Just Immigration (BAJI) and African Communities Together:

"The collective of Black immigration advocacy groups in their complaint to DHS accused the department of denying migrants their statutory and international law rights to apply for asylum; having a lack of interpreters for communication with DHS officials; verbal abuse and physical violence/intimidation; and denying media outlets access to the border area, among other alleged violations. Due to these complaints, the coalition is demanding the stop of all deportations for those migrants whose rights were violated at the Del Rio border.

It is the hope of these advocacy groups that migrants can testify to the violations they endured or witnessed. As for those who have already been expelled from the country, [Breanne} Palmer [UndocuBlack Network Policy and Advocacy Director] says the DHS should bring back those who were "deported before they were able to speak to legal advocates or human rights advocates."

Palmer added that if Black immigration advocacy groups do not have their asks met by the administration, they are considering legal recourse. "We are exploring our options," she said."

### Powerful comments from the Reverend Al Sharpton in the Washington Post:

"He said on election night: Black America, you had my back, I'll have yours. Well, we're being stabbed in the back, Mr. President. We need you to stop the stabbing — from Haiti to Harlem."

New York Times columnist Charles Blow in his new piece, "The Mendacity of

### Joe Biden":

"The Biden administration — and Democrats in general — always seem to say the right things on racial issues, but too often their deeds come up short when measured against their talk.

...At a certain point, words ring hollow, even when they are the right words ... The Biden administration's handling of the Haitians was just wrong. It was also heartbreaking and disgusting."

...As is too often the case, Black people become the political pawn, a weight around the ankle or a weapon in the hand. Our humanity is reduced to a calculation or a cause. We can be chased down by horseback-riding agents or flown out by weak-kneed presidents."

## American Immigration Lawyers Association President Allen Orr on Border Patrol agents seen on horseback cruelly corralling migrants:

"I understand they've already been suspended but they need to be fired. This is a reprehensible sort of action against foreign nationals applying for entry into our border and we saw the photos and videos as we've seen in many other Black crimes so there's really not a lot to think about. It's also not the type of thing you can untrain someone to do. If someone is going to treat a human being in that fashion it isn't something you go in the room and have a conversation with him about and say please don't do this again."

# Rep. Yvette Clarke (D-NY), Rep. Ayanna Pressley (D-MA) led fellow Democrats in hosting a <u>press conference</u> at the House triangle last week, and sent a <u>letter</u> to the Biden Administration urging an immediate end to deportations to Haiti and support for the diaspora. Rep. Pressley said in a statement alongside the letter:

"The Biden Administration cannot claim it is doing everything it can to support the Haitian community while continuing to unjustly deport Haitians as the island weathers its worst political, public health and economic crises yet. We have a moral obligation to lead with compassion. That means immediately halting the cruel and callous deportations of our Haitian neighbors and leveraging every resource available to support those fleeing the humanitarian crisis on the island."

### NAACP President and CEO Derrick Johnson, has <u>spoken forcefully</u> on the treatment Haitians have endured:

"No person fleeing poverty and hunger should be treated in this egregious manner. For far too long, the Haitian community has endured mistreatment at the hands of our nation. The administration has got to grant temporary protected status (TPS) to those seeking refuge. The actions of the U.S. border patrol are deplorable and should be investigated and reprimanded. Our country claims to be better than this — we must show it."

## MSNBC host Joy-Ann Reid also <u>condemned</u> the Biden Administration's cruelty, adding:

"Unbelievable images from Del Rio, Texas. This video shows horse patrol for U.S. Customs and Border Protection trying to corral human beings like cattle and chasing after haitian migrants trying to cross back into U.S. These horrifying images seem far more reminiscent of the fugitive slave acts of the 1790s and 1850 and not 2021."

### Center for American Progress President and CEO Patrick Gaspard, and Former Obama-era Ambassador to South Africa, visited Del Rio and wrote in a statement:

"The Biden administration must do more to protect Haitians, starting by immediately halting deportations back to Haiti. Current conditions in the country cannot support these deportations. The administration must also ensure that all people at the border are, at a bare minimum, treated humanely and given food and water, shelter, and medical care as needed."

### Black Lives Matter condemned the treatment of Haitians at the border:

"Over the weekend, U.S. Customs and Border Patrol (CBP) agents on horseback whipped and brutalized Haitian asylum-seekers, forcing them away from crossing into the United States. CBP is rooted in the same history of slave catching as other policing agencies. This despicable origin is starkly illustrated in the video and photo images of this weekend's brutality. Once again, we are reminded that policing and immigration are inextricably linked and that migration is rife with anti-Blackness."

## The Black Alliance for Peace also <u>called out</u> the Biden Administration for their "illegal and racist" policy of deporting Haitians:

"This rogue state action is both morally indefensible and illegal under international law. The United Nations 1951 Refugee Convention 'recognizes the right of persons to seek asylum from persecution in other countries' and stipulates that states have an obligation to provide reasonable measures to allow for individuals to seek asylum. Ajamu Baraka, national organizer for the Black Alliance for Peace (BAP) added "Seeking asylum by individuals who may be facing prosecution, imprisonment and even death because of political affiliation or membership in racial, national, sexual or religious groups is a recognized requirement under international law. That the Biden administration has ordered federal authorities to mass deport thousands of Haitians, which will probably have the effect of driving many of them who will resist deportation back into Mexico and Central and South America, is both unprecedented in its scope and fundamentally racist."

Follow Frank Sharry, Douglas Rivlin and America's Voice on Twitter:

@FrankSharry and @douglasrivlin and @AmericasVoice

America's Voice – Harnessing the power of American voices and American values to win common sense immigration reform

www.americasvoice.org

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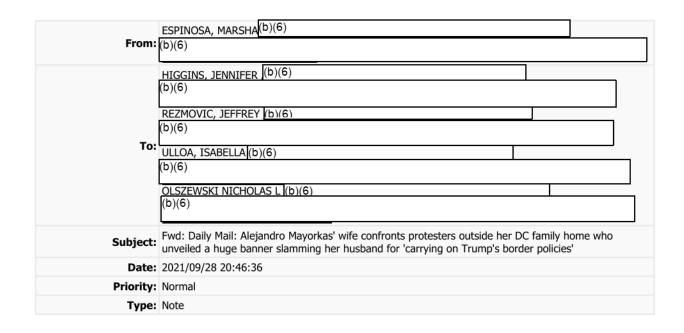
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For vis

From: MAIA SILVA, EDUARDO (b)(6)

Sent: Tuesday, September 28, 2021 8:39:59 PM

**To:** PressTeam (b)(6) OPA Strategic Communications

(b)(6)

**Subject:** Daily Mail: Alejandro Mayorkas' wife confronts protesters outside her DC family home who unveiled a huge banner slamming her husband for 'carrying on Trump's border policies'

Daily Mail: Alejandro Mayorkas' wife confronts protesters outside her DC family home who unveiled a huge banner slamming her husband for 'carrying on Trump's border policies' (Katelyn Caralle)

Alejandro Mayorkas' wife had a run in with protesters outside their D.C. home on Monday as they hung a 30-foot banner and chanted accusations that the Biden administration is carrying out Trump immigrations policies.

'We talked briefly to the wife of DHS Secretary Mayorkas,' Never Again Action, a Jewish anti-Immigrations and Customs Enforcement (ICE) organization posted on Twitter. 'She was very angry, and told us that this was her family home.'

'And we really do understand that,' they continued in a Monday Twitter thread. 'But again, there are families being torn apart every day. There are people being deported from their home forever, every day.'

They included a video of Tanya Mayorkas walking away with her dog on a leash along with what appears to be a plain-clothes security guard.

'We know that doing an action at someone's house can make things personal &bring families into the equation,' Never Again tweeted. 'But our first responsibility is to the personal trauma and the families torn apart by Trump's policies, that the Biden administration continues to use against immigrants.'

The group was protesting the recent deportation efforts at the southern border by covering Homeland Security Secretary Mayorkas' DC residence in a banner reading: 'Biden President Trump Policy.'

'We just covered his [Mayorkas'] house with a 30-foot emergency blanket banner, speaking the truth: on immigration, the Biden presidency is a continuation of Trump policy,' the group wrote on Twitter.

Along with the post was an image of the silver banner with red lettering that included the hashtag '#KeepYourPromises'.

They said their goal in the banner and chanting outside his home is to make the deportation of illegal immigrants 'impossible to ignore.' They also admitted that they doxxed Mayorkas by revealing to some of his neighbors that the man in charge of ICE and Border Patrol lived there.

Never Again Action protests around the country with the goal of the total abolition of ICE. The group derives its name from the slogan 'never again,' which is most often used in reference to the Holocaust.

'Biden promised to dismantle Trump's cruel immigration system, and replace it with one that's 'fair and humane.' Instead, his admin is doubling down on Trump's policies and tactics of fear. It's exactly what we all voted against,' the organization wrote on Twitter.

The protest is in direct response to the images coming from the border as DHS ramps up its deportation of illegal immigrants and asylum-seekers. A group of around 15,000 of mostly Haitian migrants set up an encampment near the Del Rio International Bridge in Texas this month that led to the Biden administration's ramped up removal efforts.

Several deportation flights have gone from the U.S. to Haiti since last Sunday. But what has most people upset is the images of Border Patrol agents on horseback appearing to use the reins as whips on migrants.

The agents insist they were only using the split reins to direct their horses and wrangle the migrants, but not to whip them.

In one video from outside the secretary's home on Monday, a member of the group could be heard behind the camera saying they are holding Biden and Mayorkas accountable for the promises they are breaking at the border.

'Secretary Mayorkas has the power to do two things,' they continued is their thread. '1. Cancel Trump's border policy 2. Cancel Trump's ICE contracts'.

In upsetting Mrs. Mayorkas and causing a ruckus the group said that was the goal of the protest.

'Secret Service everywhere at the house of DHS Secretary Mayorkas,' they wrote. 'This was our goal: to make the deportation crisis, at the border &in our communities, impossible to ignore.'

The tweet added: 'If Biden's admin thinks they can keep Trump's policies AND keep it quiet... they're very wrong.'

'We've been talking to lots of neighbors, who didn't realize they live next to the man in charge of ICE &Border Patrol,' they added. 'Most of them have been really supportive, saying things like 'this isn't what I voted for.' One man was really angry. He kept repeating 'but it's his home.'

A link in the Twitter thread leads to a page titled 'Cancel Trump's Immigration Policies' that prompts people to sign the petition.

'Joe Biden promised his administration would end Trump's reign of terror against immigrants. He promised to make the immigration system 'fair and humane.' The scarring images we saw last week showed the truth about these broken promises,' a message attached to the petition reads.

'From violently deporting refugees at the border to keeping ICE in our communities, Biden's presidency has been a continuation of Trump's policy on immigration,' they added.

'It has to stop. We have to stop it.'

'DHS Secretary Mayorkas oversees Border Patrol and ICE. He's the one with the power to reverse these Trump policies, and stop enforcing Trump's immigration agenda,' Never Again Action claimed. 'So we're calling on Mayorkas to keep the promises that were made, and do two things: cancel Trump's border policy, and cancel Trump's ICE contracts.'

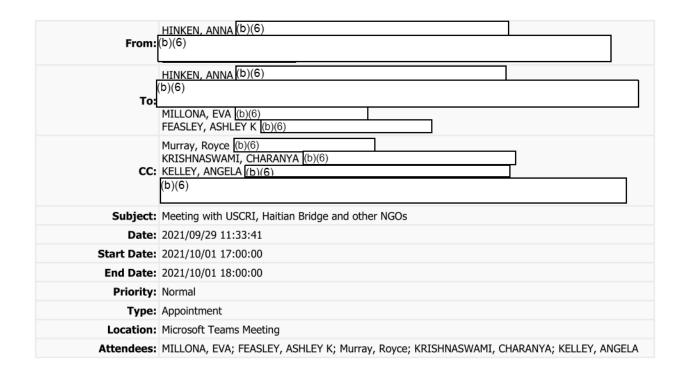
They explained that canceling the Trump order policies would entail ending 'Title 42', which is a tool used by the the Centers for Disease Control and Prevention during public health emergencies and is currently being used to allow for more streamlined deportation to prevent furtherance of the coronavirus pandemic by way of migration to the southern border.

By canceling ICE contracts, the Never Again Action is seeking to stop cooperation between the immigration enforcement agency along with local police departments, which can lead to increased deportations when illegal status is reported.

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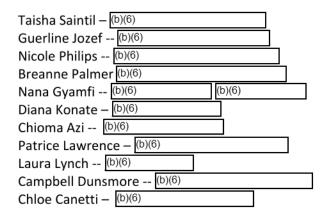
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USCRI and other NGOs requested a meeting with A/S Millona and CBP to discuss the attached letter. Meeting is contingent on the shutdown.

### Participants:



### Microsoft Teams meeting

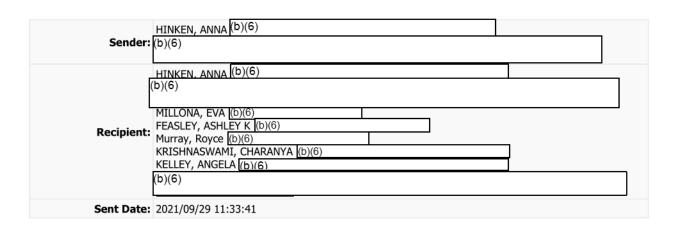
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September 24, 2021

The Honorable Joseph R. Biden President The White House 1600 Pennsylvania Avenue NW Washington, D.C. 20500

The Honorable Alejandro Mayorkas Secretary U.S. Department of Homeland Security 3801 Nebraska Avenue NW Washington, D.C. 20016

The Honorable Troy Miller
Acting Commissioner
U.S. Department of Homeland Security
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, D.C. 20229

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San Salvador, El Salvador
Washington, DC

### **RE: DHS Policy and Treatment Towards Haitian Migrants**

Dear President Biden, Secretary Mayorkas, and Acting Commissioner Miller:

The U.S. Committee for Refugees and Immigrants, and Haitian Bridge Alliance, as well as the undersigned twenty eight organizations write to condemn the new "Strategy to Address Increase in Migrants in Del Rio" adopted by the Department of Homeland Security (DHS) on September 18, and to request that DHS immediately rescind the strategy in its entirety and fully restore asylum access for Haitians and other migrants at the southern border. The policy, and the cruel and unacceptable actions of border patrol agents who were documented chasing and whipping migrants on horseback, are both inhumane and illegal. The Biden administration has promised to make immigration fair and humane, and to address racism in U.S. policy. This new policy of rounding up, pushing back, detaining, deporting, and whipping Haitian migrants negates the administration's promises and must be ended immediately.

Haiti is currently experiencing extraordinary turmoil and danger, as the Biden administration recently acknowledged through its redesignation of Temporary Protected Status to Haitians already residing in the United States on or before July 29. According to the <a href="Federal Register notice">Federal Register notice</a> by the State Department and DHS just over one month ago,

refugees.org

"Haiti is grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses... Haiti faces the challenges of 'rising food insecurity, and malnutrition... waterborne disease epidemics, and high vulnerability to natural hazards, all of which have been further exacerbated by the coronavirus disease.'"

This assessment was made *before* the 7.2 magnitude earthquake that hit Haiti in August, killing over 2,200 people and damaging or destroying over 120,000 homes. Years of multiple crises in Haiti have caused Haitians to flee in search of safety.

The policy outlined by DHS in the Strategy to Address Increase in Migrants in Del Rio orders border patrol and ICE agents to "ensure that irregular migrants are swiftly taken into custody, processed, and removed." It also states that DHS will accelerate removal flights to Haiti within 72 hours. The strategy uses Title 42 as part of its authority for these policies, and frames expulsions in reference to both individuals and families. This strategy violates both domestic law and international human rights. In addition, the strategy is inhumane and rooted in a history of racist and biased immigration policies against Haitians. For these reasons, the strategy must be rescinded immediately and Haitians arriving at the U.S.-Mexico border must be allowed and encouraged to exercise their right to seek asylum.

### The Strategy is Illegal and in Violation of Human Rights

The Biden administration has been using Title 42 as an excuse to deport asylum-seekers without due process from the beginning. Despite a recent federal court ruling that the use of Title 42 for this purpose is illegal, and that the administration must stop <u>using it against family units</u>, the administration has decided to appeal this ruling and continue deportations using Title 42. Although the administration has constantly tried to justify Title 42 as a public health matter, numerous public health experts have decried the policy as having no basis in public health. DHS must not continue to invoke Title 42 without any rational basis to deport Haitians and their families to danger without the chance to seek asylum.

Not only is DHS continuing to rely on a policy with an invalid and illegal rationale to deport Haitians, but these deportations violate Haitians' and other asylum-seekers' basic human right to seek asylum at U.S. borders. According to <u>U.S. law</u>, any person who "arrives in the United States (whether or not at a designated port of arrival...), irrespective of such [person's] status, may apply for asylum" (emphasis added). Even Haitians who are not arriving at ports of entry have the right to seek asylum under U.S. law.

In addition to the right to seek asylum, these vulnerable migrants have the right not be returned to a place where their lives or liberty would be in danger. This principle of *nonrefoulement* is enshrined in multiple international human rights conventions, including the 1951 Refugee Convention<sup>1</sup> and the Convention Against Torture<sup>2</sup>. Deporting Haitians back to Haiti without any regard for their safety after deportation is a clear violation of the principle of *nonrefoulement*.

### The Strategy is Inhumane

Haitians arriving at the U.S.-Mexico border have fled dangerous and desperate situations of persecution, political upheaval, poverty, gang violence, and natural disaster exacerbated by climate change in their home country. When they are expelled, many face the same persecution or other life-threatening dangers they fled in Haiti, or they are expelled to Mexico. Once in Mexico, they do not have legal status and cannot legally work. They are unable to access basic services and are vulnerable to harassment by gangs that target migrants.

The UN Convention and Protocol Relating to the Status of Refugees (1951) states: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

<sup>&</sup>lt;sup>2</sup> The UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984) states: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

Migrants pushed back into border cities in Mexico <u>have reported being</u> "sexually assaulted, abducted for ransom, extorted, robbed at gunpoint, and subjected to other crimes." The situation is even more dire for Haitians, as anti-Black racism is rampant and attacks against Black asylum-seekers in Mexico <u>continue to</u> escalate.

It is not only the conditions to which Haitians are returned that make this strategy inhumane; U.S. border patrol agents have been using excessive force to drive Haitians back to Mexico using barbaric methods such as <a href="https://white.com/wh

### The Strategy has Discriminatory Roots

Despite U.S. financial and political support for the Duvalier regime of the 1960s-1980s, as well as the hotly contested extension of recently-assassinated president Juvenel Moïse's presidency, both of which have caused turmoil in Haiti and led to the movement of refugees, U.S. immigration law has not borne responsibility for the devastation caused to the Haitian people. The United States has consistently blocked and expelled Haitian migrants fleeing oppression and violence. The <u>U.S. government</u> expelled Haitians under the Duvalier regime, created a rapid expulsion program to deport Haitians in 1978, incarcerated Haitians at disproportionate rates to other immigrants in the 1980s, returned Haitians apprehended at sea by the thousands between 1981 and 1991, and excluded Haitians from immigration relief efforts in the 1990s.

Under previous presidential administrations, new policies were created that targeted Haitians. In the final months of the Obama administration, an unofficial implementation of a 'metering' policy occurred when thousands of Haitians crossing from Mexico into the United States to seek asylum were <u>turned away in lieu of formal inspection</u> or processing. The Obama administration utilized an explanation of crowding at particular points of entry at the border to justify these actions. The Trump administration subsequently implemented metering as an <u>official immigration policy in 2018</u>. In 2017, the Trump administration tried to terminate TPS for Haiti, but was forced to reinstate it by two federal courts who ruled the termination was fueled by racism. In 2018, the administration removed Haitians from eligibility for temporary work visa programs and ended a Haitian family reunification program. In 2020, under the guise of public health, the Trump administration began expelling Haitians back to danger at alarming rates using Title 42, a policy that the Biden administration continues to support and attempt to uphold. In fact, there have been <u>more Title 42 expulsions</u> in the first few weeks of the Biden administration than during an entire year of Trump's administration. Even as the administration acknowledged the "extraordinary" conditions making Haiti unsafe for return and thus eligible for TPS, DHS resumed and increased expulsions to the country.

Haitians have continuously been targeted for discrimination and exclusion by U.S. immigration policies, despite their desperate need to find safety and their human right to seek it. This administration must not continue this discrimination, allowing Haitians to be expelled to extreme danger.

### The Strategy Must be Rescinded and Asylum Access Restored Immediately

The strategy recently implemented by DHS to address the influx of Haitian migrants in Del Rio is illegal, immoral, and a continuation of the failure of the United States to treat Haitians and all migrants with respect and dignity. The undersigned thirty organizations demand that the administration immediately rescind the strategy, end the use of Title 42, stop expulsion flights of Haitians and all other migrants who have not had the chance to seek asylum, and restore all of the rights and benefits owed to asylum-seekers under both international and U.S. law.

### Sincerely,

Eskinder Negash

President and CEO of USCRI

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### And the following organizations,

Alianza Americas

Alianza Nacional de Campesinas

Amnesty International USA

ADL (Anti-Defamation League)

Asian Americans Advancing Justice | AAJC

Center for Popular Democracy

Church World Service

Earthjustice

Faith in New Jersey

First Focus on Children

Haitian Bridge Alliance

**Hispanic Federation** 

Immigrant Justice Network

International Refugee Assistance Project (IRAP)

Justice Action Center

Latin America Working Group

Laundry Workers Center

MomsRising

National Immigration Law Center

New Jersey Alliance for Immigrant Justice

New Jersey Consortium for Immigrant Children

**New York Immigration Coalition** 

Oxfam America

Robert F. Kennedy Human Rights

UndocuBlack Network

Union for Reform Judaism

United We Dream Network

Wind of the Spirit Immigrant Resource Center

Young Center for Immigrant Children's Rights

For Immediate Release: October 1, 2021

Contact: press@wearehome.us

WE ARE HOME CAMPAIGN: The Biden Administration's New Immigration Enforcement Guidelines Fall Short, Fail to Protect Immigrant Communities and Asylum Seekers

Washington, D.C. – On Thursday, Department of Homeland Security Secretary Alejandro Mayorkas issued his long-awaited agency guidance on immigration enforcement. The guidance, which is the product of extensive agency-wide review and engagement with stakeholders including immigrant community leaders and advocates, provides directives to the DHS workforce to guide their enforcement decisions, including who they choose to arrest or deport and when they exercise prosecutorial discretion.

Despite extensive advocacy and input from immigrant communities, the guidance fails to meaningfully fulfill the Biden Administration's commitments to make the immigration system more fair and humane, and to advance racial equity.

Leaders across the We Are Home campaign issued the following statements.

Bridgette Gomez, Campaign Director for the We Are Home campaign, said: "When President Biden was elected, we were hopeful that he would live up to his commitments to create a more just and humane immigration system and to champion racial equity for all, including Black and brown immigrants and asylum seekers. Unfortunately, this Administration is failing to follow through on its promises.

In continuing a misguided enforcement-driven approach that encourages the targeting of immigrants and asylum seekers as risks to public safety, national security, and border security, the Administration is continuing to disregard the rights and humanity of immigrant communities in the U.S. and people seeking protection at the border.

We are heartened to see that the Administration has heard the demands of our coalition in no longer categorically targeting people for deportation based on interactions with the criminal legal system and in respecting the rights of workers, tenants, and others. But make no mistake: our communities remain at risk. The We Are Home campaign urges the Administration to actively partner with immigrant communities to follow through on its commitments and to hold the DHS and ICE workforce accountable to the principles of justice and fairness highlighted in this guidance.

Without accountability and follow through, the guidance is just words on paper. Ultimately, the Administration must shrink the size of the enforcement system altogether."

Jacinta Gonzalez, Senior Campaign Organizer, Mijente, said:

"On the campaign trail, now-President Biden was very clear: he would bury the American tradition of criminalizing asylum seekers, treat migrants with respect and humanity, and put privately run immigration detention centers firmly in America's past.

Today, with the release of the new prosecutorial discretion memo (PD Memo) immigration, organizers continue to feel whiplash.

The memo maintains the status quo, targeting all recently-arrived migrants — including asylum seekers — as priorities for deportation. By failing to meaningfully change the guidelines that determine how ICE handles enforcement at the border, the Biden Administration continues to align itself with the cruelty that outraged America during President Trump's term.

However, we are encouraged that the memo reflects some of the critical demands around anti-criminalization that were hard-fought by organizers. For the first time, a criminal conviction will no longer automatically make someone a priority for deportation.

This memo will be judged by its on-the-ground implementation. We must see arrests, detention, and deportation numbers decline significantly. We must see ICE agents held accountable. We will continue to monitor ICE's actions and organize for immigrants to be recognized as full human beings."

Stacy Suh, Program Director of Detention Watch Network, said:

"Ultimately, the prosecutorial discretion memo can only do so much in an immigration system that criminalizes and targets people who are navigating their immigration case. Reducing the scale of the immigration enforcement, detention, and deportation apparatus is one of the most concrete ways to protect migrant communities. The Biden administration must deliver on his campaign promises and shut down detention centers and halt any plans for detention expansion."

Sirine Shebaya, Executive Director of the National Immigration Project, said: "President Biden promised to create a more humane and just immigration system, but this memo falls far short of delivering what our communities need: bold and fundamental transformation, not changes around the edges to the same detention and deportation machinery.

Today, on the 25th anniversary of IIRIRA, we are reminded of the pressing need to disentangle our immigration and criminal legal systems. While we are encouraged by the shift away from categorical exclusions, we are extremely concerned that the 'national security', 'border security', and 'public safety' framing will continue to target Black, Brown, Muslim, Arab, Asian, and other immigrants of color, and feed the detention and deportation machines.

Having seen the horrific mistreatment of Haitian migrants at the border this past month, we are especially appalled to see DHS label migrants who attempt to cross the border outside of ports of entry as 'threats to border security.' With Title 42 in place, asylum seekers have virtually no other way to enter the country. The perpetuation of these false narratives is precisely what leads to the cruel treatment migrants experience at the border.

We urge the Biden administration to hear the demands of our communities and take immediate and concrete steps to disentangle these systems; invest in communities; and keep families and communities together."

Nick Katz, Legal Director, CASA, said:

"While we welcome some of the improvements made in this updated enforcement guidance – including the directive not to target someone simply for being undocumented – we are deeply disturbed that DHS did not take this opportunity to engage in a broad rethinking of immigration enforcement that focuses on immigrants as people, not as priorities for deportation.

Despite the encouraging language mandating that DHS consider the totality of the circumstances in every case, by maintaining categories that label someone as a 'priority' based on an arbitrary date of entry to the country, or an interaction with our deeply flawed criminal legal system, DHS has continued down the same failed path it has walked for the past two decades. This guidance will ensure that thousands of immigrants every year are funneled into an inhumane detention system that cages asylum seekers, while fighting for their lives in courts where the odds are stacked against them – if they ever even get to see an immigration judge at all.

We call on Secretary Mayorkas to ensure that the commitment to accountability in this guidance is realized by establishing meaningful systems of review and oversight that value the fundamental dignity of all people. Policy shifts under the Obama administration too often failed because DHS officers simply refused to implement them. This time, DHS must guarantee real accountability for agency staff and private contractors who fail to implement reforms or continue to engage in abusive practices including civil rights violations."

Yaritza Méndez, Co-Organizing Director at Make the Road New York, said: "The Department of Homeland Security's new enforcement memo is deeply disappointing to immigrant communities across the country. While it takes the important step of not creating categorical criminal bars to receiving discretion, this new guidance memo falls short of the Biden administration's commitments and promises to create a fair and humane immigration system by continuing to rely on a racist criminal legal system and to discriminate against asylum seekers coming to our borders. In recent weeks, we have witnessed the horrific cruelty by CBP against Black migrants seeking protection. We also continue to see evidence every day of the coercive and harmful effects of a biased and broken criminal legal system, particularly on communities of color. Left to use their own discretion, agencies like ICE have an alarming history of terrorizing, detaining and separating communities. We cannot continue to build on a system that inflicts harm on our immigrant communities.

We urge the Biden administration to aggressively and affirmatively monitor ICE offices to stem unjust and harmful enforcement practices. We also urge the administration to revisit these guidelines and publish revisions that halt criminalization of immigrants, end detention of all people and ensure immigrants are treated with the dignity and respect

they deserve. In addition, we demand accountability for all agencies who continue to engage in unjust and inhumane enforcement practices."

Cynthia Garcia, National Campaigns Manager for Community Protection of United We Dream, said:

"We need humane leadership from the Biden administration to urgently address the needs of immigrant communities who have historically been excluded from meaningful legislation and continue to face the threat of detention, deportation, and death at the hands of ICE and CBP.

As years of continuous abuse against Black and brown immigrants have proven, immigration enforcement has often ignored guidelines and continued to operate with anti-Blackness and white supremacy as its core mission.

This leads to the continued profiling and criminalization of people in our communities. While organizers nationwide fought hard for this memo to include anti-criminalization demands, the Biden administration must understand that our communities need more than words on paper. We need action that fulfills our vision to keep all immigrants safe. The Biden administration must defund immigration enforcement now!"

Marielena Hincapié, Executive Director of the National Immigration Law Center, said: "The memo includes some meaningful improvements, including new protections from retaliation for tenants as well as for workers asserting their rights, which is an important first step in ensuring all workers can do their jobs safely and exercise their legal rights without fearing employer intimidation, arrest, or deportation.

However, the memo places a dangerous amount of discretion in the hands of ICE agents. Given the agency's long history of operating – and even rewarding – a culture of cruelty and impunity, it is crucial for the agency to commit to ensuring that these priorities are implemented fairly and justly, and that DHS leadership ensures ICE agents are held accountable."

Heidi Altman, Director of Policy, National Immigrant Justice Center, said:

"This memo continues to place too much power over people's fates and freedom in the hands of a corps of officers with an extensive history of racial profiling, due process violations, and human rights abuses. Inexcusably, the new enforcement guidelines prioritize the deportation of anyone who crosses the southern U.S. border without permission, which we fear officers will interpret to include asylum seekers and families who have been barred from requesting protection as the Biden administration continues to block asylum seekers from ports of entry. The secretary has a responsibility to oversee an immigration system that upholds justice and dignity. Unfortunately, these guidelines fall far short of the changes needed to achieve that vision."

## DHS Secretary: New immigration priorities will consider 'totality' of migrants. A migrant's military service to be considered prior to deportations

McALLEN, Texas (<u>Border Report</u>) — As the Biden administration faces criticism for the repatriation of Haitians from Del Rio, Homeland Security Secretary Alejandro Mayorkas on Thursday released new immigration enforcement priorities that he said will make it fairer and more inclusive for those seeking asylum.

The <u>new "Guidelines for the Enforcement of Civil Immigration Law,"</u> requires a total assessment of the migrant — where and when they came to the United States, why, and most importantly how much of a public threat they are. It also must consider whether the migrant served in the U.S. military or performed other public service roles while in this country.

"For the first time, our guidelines will, in the pursuit of public safety, require an assessment of the individual and take into account the totality of the facts and circumstances," Mayorkas said in a statement.

Teachers, front-line workers and those with longstanding ties in American communities are to be considered for their contributions to society, Mayorkas said. "In exercising our discretion, we are guided by the fact that the majority of undocumented noncitizens who could be subject to removal have been contributing members of our communities for years," Mayorkas wrote in a seven-page memo on the new law sent Thursday to U.S. Customs and Border Protection Acting Commissioner Troy Miller, U.S. Immigration and Customs Enforcement Acting Director Tae Johnson, and several DHS leaders.

"Including those who have been on the frontline in the battle against COVID, lead congregations of faith, and teach our children. As we strive to provide them with a path to status, we will not work in conflict by spending resources seeking to remove those who do not pose a threat and, in fact, make our Nation stronger," he said.

Noncitizens who pose a threat to public safety and border security are a priority for removal from the United States, under the new guidelines, which for the first time also consider individual assessments of migrants to get a better picture of whether they should be allowed to stay, or not.

"The fact an individual is a removable noncitizen will not alone be the basis of an enforcement action against them. The Department's personnel are to use their discretion and focus the Department's enforcement resources in a more targeted way," DHS said in a statement.

Mayorkas came up with this plan after months of meeting with officials within DHS, as well as ICE. And he touted it will provide for better "prosecutorial discretion."

The new guidelines prohibit a noncitizen's race, religion, gender, sexual orientation, national origin, gender identity, mental impairments, or political affiliations from preventing their case for migration to go forward.

And it requires that public service, such as the military, to be considered when evaluating each immigration case.

That's something that U.S. Rep. Vicente Gonzalez, D-Texas, who represents the South Texas border and has been a champion for deported veterans says "was long overdue."

"Glad to see Democrats stepping up to the plate in protecting U.S. veterans from deportation," Gonzalez told Border Report.

"The new guidelines will enable our Department to most effectively accomplish our law enforcement mission and, at the same time, advance our country's well-being by recognizing the invaluable contributions of millions of individuals who are part of the fabric of our communities," he said.

Migrant advocates reacted Thursday afternoon with measured caution. Jacinta Gonzalez, a senior campaign organizer for the group Mijente said they will be monitoring DHS closely to ensure these guidelines are followed and changes to ICE operations occur.

"So much of what we're going to be watching in the next couple months will be how this will be implemented in local field offices and what kind of accountability will be put in place," Gonzalez said during a national call with media.

"How is it really going to be impacted by ICE agents who have a history of violence and violating peoples' rights?" she said.

"The devil really is in the details. There is a lot we need to continue to focus on and watch to see which direction this agency goes from this point," said Sonia Lin from the We Are Home campaign.

"Today what we're seeing is a harmful exclusion of immigrants of migrants from Haiti and other migrants at the border," said Sirene Shebaya, executive director of the National Immigration Project of the National Lawyers Guild. "Glaring omissions need to be addressed urgently."

The new law takes effect on Nov 29, and replaces previous immigration priorities established by Johnson in February.

National Immigrant Justice Center Director of Policy Heidi Altman issued the following statement in response to Department of Homeland Security Secretary Alejandro Mayorkas's new memo to U.S. Immigration and Customs Enforcement (ICE) regarding immigration enforcement guidelines:

"Coming in the wake of deportations of thousands of <u>Haitian asylum seekers</u> and news that the Biden administration has reneged on its commitments to end <u>for-profit</u> <u>immigration detention</u>, the secretary's memo fails to meaningfully address the punitive and abusive culture that has characterized ICE for nearly two decades.

"This memo continues to place too much power over people's fates and freedom in the hands of a corps of officers with an extensive history of racial profiling, due process violations, and human rights abuses. Inexcusably, the new enforcement guidelines prioritize the deportation of anyone who crosses the southern U.S. border without permission, which we fear officers will interpret to include asylum seekers and families who have been barred from requesting protection as the Biden administration continues to block asylum seekers from ports of entry.

"We are pleased to see the secretary offer some policy shifts responsive to communities' demands that immigration decisionmaking should embrace the humanity and lived experiences of people living in this country and not rely solely on outdated measures based on convictions and gang databases. It is good that the secretary also commits to develop a 'fair and equitable' process through which individuals can seek review of enforcement actions taken against them. But ICE has proven over and over that it is not an agency capable of humane or fair decisionmaking, and any case review process must be independent of ICE and accessible to people who do not have lawyers.

"The secretary has a responsibility to oversee an immigration enforcement system that upholds justice and dignity. Unfortunately, these guidelines fall far short of the changes needed to achieve that vision."

The <u>memo itself</u> will go into effect in 60 days (November 29, 2021). Here is a summary of its contents:

Acknowledgment of the long-standing executive authority to exercise discretion in immigration enforcement: The memo begins with a reminder that the exercise of prosecutorial discretion is well established in the immigration arena. The Department of Homeland Security has historically justified its exercise of prosecutorial discretion in the limited availability of enforcement resources.

In this memo's opening section, Secretary Mayorkas repeats this justification but also, importantly, notes that the use of discretion is in the interests of "[j]ustice and our country's well-being."

Immigration enforcement priorities: NIJC and our partners in the We are Home campaign have repeatedly <u>called on</u> the Department of Homeland Security to abandon the long-standing and harmful framework for immigration management that prioritizes individuals for enforcement, and instead adopt a framework that prioritizes the provision of protection and relief. We are disappointed that the secretary did not change this basic framework. Instead, the memo maintains the three categories provided in its interim memo for "civil immigration enforcement priorities." These categories are outlined as follows:

- Individuals defined by DHS as a "threat to national security": This category is defined to include those who engaged in or are suspected of terrorism or espionage "or who otherwise pose a danger to national security."
- 2. Individuals defined by DHS as a "threat to public safety": This category is defined to include those who pose "a current threat to public safety, typically because of serious criminal conduct." DHS personnel are instructed that they "should not rely on the fact of a conviction or the result of a database search alone" in making an enforcement decision. The memo does not include particular categories of criminal offenses that trigger the enforcement priority, as were included in the February interim enforcement memo, a welcome change. The memo does provide a non-exhaustive lists of aggravating factors that would militate in favor of enforcement, and mitigating factors that would militate against enforcement, as follows:
- Aggravating factors defined to include: gravity of offense and sentence imposed; nature and degree of harm caused by an offense; sophistication of the criminal offense; use or threatened use of firearm or dangerous weapon; and/or serious prior criminal record.
- Mitigating factors defined to include: advanced or tender age; lengthy presence in the U.S.; a mental condition requiring care or treatment; status as victim of crime or a victim, witness, or party in legal proceedings; the impact of removal on family in the U.S.; eligibility for humanitarian protection or other immigration relief; military or other public service provided by the person facing enforcement or their immediate family; time since an offense and evidence of rehabilitation; and/or if the conviction was vacated or expunged.
- 3. Those individuals defined by DHS as a "threat to border security": This category is defined to include all people who were apprehended by DHS at the border or a port of entry "while attempting to unlawfully enter the United States" or who was apprehended in the United States "after unlawfully entering after November 1, 2020. In a harmful omission, this section does not explicitly address those entering with the intention to seek asylum, which is a lawful right protected under U.S. law.

Provisions regarding civil rights and civil liberties and retaliation: The memo clarifies that neither protected grounds such as race, religion, gender, sexual orientation or gender identity, national origins nor a person's exercise of their First Amendments rights should be factors in a decision to take enforcement action. Specifically, the memo acknowledges that employers and landlords often exploit immigration status in light of vulnerability to deportation, and provides that a person's exercise of workplace or tenant rights, or role as a witness in a labor or housing dispute, should be considered a positive mitigating factor in the exercise of prosecutorial discretion.

Training and oversight: The memo directs the creation of a rigorous training program and materials, as well as a short-term and long-term review process to ensure effective implementation. Component agencies within DHS are instructed to create processes to collect "detailed, precise, and comprehensive data as to every aspect of the enforcement actions [taken] pursuant to this guidance, both to ensure the quality and integrity of our work and to achieve accountability for it."

Case review process: The memo commits to the establishment of a "fair and equitable" case review process that will provide individuals and their attorneys a chance to seek review of enforcement actions taken.

## Prosecutorial Discretion in the Biden Administration: Part 4, by Shoba Sivaprasad Wadhi September 30, 2021

In a <u>memorandum</u> dated September 30, 2021, Alejandro Mayorkas, Secretary of the Department of Homeland Security, issued long-awaited guidance on prosecutorial discretion and civil enforcement priorities. Titled "Guidelines for the Enforcement of Civil Immigration Law," the seven-page document is Department wide and provides guidance for the apprehension and removal of noncitizens. This post includes some highlights of this memorandum but also encourages earlier readings on this blog (<u>here, here</u> and <u>here</u>) and <u>here</u> for earlier thoughts and recommendations on prosecutorial discretion in the Biden administration. A letter from immigration law scholars to the Secretary with recommendations on prosecutorial discretion can found here.

Foundation. The September 30 memorandum begins with naming prosecutorial discretion as a foundational principle in the immigration arena. Consistent with earlier guidance on prosecutorial discretion, the new memo notes the limited resources of the agency the impossibility of enforcing the immigration laws against every undocumented or otherwise removable noncitizen.

The new memo states that the fact of being removable should not alone be a basis for immigration enforcement. It also recognizes the contributions of the majority of those who are undocumented, profiling those "who work on the frontlines in the battle against COVID, lead our congregations in faith, teach our children, do back-breaking work to help deliver food to our table, and contribute in many other meaningful ways."

Priorities. The September 30 memorandum lists the following three civil immigration enforcement priorities. 1) Threat to National Security; 2) Threat to Public Safety; 3) Threat to Border Security. Whereas earlier guidance had defined "Threats to Public Safety" to include those who committed an aggravated felony, the new memorandum is more nuanced, and takes into account the individual aggravating and mitigating factors of the individual, requiring an assessment of "the individual and the totality of factors and circumstances."

Like the positive factors listed in historical guidance documents on prosecutorial discretion, the mitigating factors listed in the September 30 memorandum include advanced or tender age, lengthy presence in the United States, a mental condition that would have contributed to criminal conduct, impact of removal on family in the United States, and military service to name a few. This is an important change as it provides officers with more flexibility to consider each case individually.

The September 30 guidance defines "Threats to Border Security" as those who were apprehended at the border while trying to enter the United States unlawfully as well as

those who were apprehended in the United States after unlawfully entering the United States on or after November 1, 2020. Again, the guidance advises officers to consider cases individually and based on a totality of the facts and circumstances.

Civil Rights and Civil Liberties. Importantly, the guidance states that a noncitizen's race, religion, gender, sexual orientation or gender identity, national origin, or political associations, as well as First Amendment activity, shall never be factors in deciding to take enforcement action. Notably, the guidance states "We must ensure that enforcement actions are not discriminatory and do not lead to inequitable outcomes." This language is more inclusive than what has existed historically and is an important step towards improving racial disparities in immigration enforcement.

Guarding Against Immigration Enforcement as a Tool for Retaliation. The guidance instructs that immigration enforcement should not be used as a retaliatory tool again noncitizens who exercise their workplace, tenant and other rights and that serving as a witness in a labor or housing dispute should be considered a mitigating factor. This is important to ensuring that noncitizens have the agency to exercise their rights without fear of immigration enforcement.

Process and Review. The September 30 memorandum leaves the exercise of prosecutorial discretion to the judgement of personnel and identifies extensive training, a review of enforcement decisions in the first 90 days of implementation, and assurance that decision making is consistent across the agency and Department. This is a significant and important change given the historical lack of transparency or consistency in how prosecutorial discretion decisions are applied.

Data Collection. The September 30 memorandum also underscores the importance of data collection on every enforcement action. This data collection is crucial to help identify disparities in immigration enforcement and discretion, and to improve transparency and accountability.

Effective Date. The September 30 memorandum is effective 60 days from publication, November 29, 2021. On this date, the previously issued interim guidelines will be rescinded.

The September 30 Memorandum is at once comprehensive, compassionate and pragmatic about the about the important role prosecutorial discretion plays in the immigration system. The guidance is also attentive to the intersection between race and immigration enforcement, and the contributions of most immigrants living in the United States without formal status.

<u>Shoba Sivaprasad Wadhia</u> is a law professor and immigration scholar at <u>Penn State Law</u> at University Park. She is the author of two books: <u>Beyond Deportation</u>: The Role of Prosecutorial Discretion in Immigration Cases (NYU Press) and <u>Banned</u>: Immigration Enforcement in the Time of Trump, (NYU Press).

### National Immigration Forum DHS Updates Immigration Enforcement Priorities September 30, 2021

Police Chief Applauds Decision

WASHINGTON, D.C. — This afternoon the Department of Homeland Security (DHS) announced updated immigration enforcement priorities.

Safety and security remain top priorities. "We will prioritize for apprehension and removal noncitizens who are a threat to our national security, public safety, and border security," the memo states.

The guidelines shift how the department will employ prosecutorial discretion, moving away from rigid enforcement categories in favor of individualized assessments. Unauthorized status, on its own, will not be the basis for enforcement actions, according to the memo.

"In the Biden administration's new enforcement priorities, Secretary Mayorkas acknowledges that millions of undocumented immigrants are contributing community members and essential workers," said Retired Police Chief Ramon Batista of Mesa, Arizona. "In prioritizing the deportation of noncitizens who threaten public safety or national security, DHS is demonstrating its commitment to building trust with immigrant communities. I applaud this smart, compassionate decision."

"DHS is right to prioritize valuable law enforcement resources and focus on risks to national security and public safety," said Ali Noorani, President and CEO of the National Immigration Forum. "These priorities also underscore DHS's step away from enforcement based solely on unauthorized status, as we saw during the previous administration.

"By emphasizing public safety threats rather than contributing members of our communities, these priorities will benefit all Americans."

## AILA: Implementation Will Show if New ICE Guidelines Go Far Enough AILA Doc. No. 21093011 | Dated September 30, 2021

Washington, DC - The American Immigration Lawyers Association (AILA) welcomed new guidelines announced by Department of Homeland Security Secretary Alejandro Mayorkas which would shape actions by Immigration and Customs Enforcement (ICE) agents across the country.

AILA Executive Director Benjamin Johnson noted: "These guidelines are an important step in what has already been a challenging journey to reform an immigration enforcement system that does not serve our nation well. These new guidelines reflect an important shift in understanding that the exercise of prosecutorial discretion is not just about the efficient allocation of resources, it is essential to the pursuit of justice and fairness. They recognize 'the fact that the majority of undocumented noncitizens who

could be subject to removal have been contributing members of our communities for years' and they call upon immigration enforcement personnel to do a full review of the individual facts and circumstances underlying the circumstances of each case. These are welcome changes, but the new memo adopts a 'trust but verify' approach to the implementation of these guidelines that will be the critical lynchpin to its success. The training, supervision, data gathering and analysis, along with case reviews that the memo contemplates are all important, but strong leadership and a real commitment to applying these new guidelines will be needed for a true difference to be seen.

"AILA stands ready to work with the administration to guarantee that principles underlying this memo are reflected in the actions of ICE agents and officials. Our country needs and deserves nothing less."

## Immigration Project: New DHS Enforcement Priorities Will Continue to Fuel Detention and Deportation Machines

Newly Released Memo Perpetuates Inhumane Treatment of Migrants, Criminalization of Immigrants For Immediate Release September 30, 2021

Washington DC - Today, the Department of Homeland Security (DHS) released a <u>new memo</u> outlining the agencys immigration "enforcement priorities." The memo continues an enforcement-first approach, targeting three broad categories of people for arrest, detention, and deportation, rather than prioritizing people for protection. DHS's choice to continue with its criminalizing framework will perpetuate significant racial disparities for immigrants in the United States and has already led to horrific cruelty against Black migrants seeking protection at the border.

See here for a quick FAQ on the September 30th Mayorkas Memo.

Said Sirine Shebaya, Executive Director of the National Immigration Project: "President Biden promised to create a more humane and just immigration system. What this requires is a fundamental transformation, not changes around the edges to the same detention and deportation machinery. While we appreciate the move away from broad categorical exclusions, the memo falls short of delivering what our communities have been asking for. It continues to harness the same framing of 'national security,' 'border security,' and 'public safety' that DHS and other law enforcement agencies have long used as pretexts to target Black, Brown, Muslim, Arab, Asian, and other immigrants of color.

"Already, we have seen the number of people in immigration detention increase by 70% since President Biden took office. Just this week, ICE signed a new contract with a private facility expanding its detention beds in Pennsylvania. The last thing our communities need is for ICE and CBP — agencies both rife with abuse — to be encouraged to prioritize people for arrest and deportation. The broad discretion given to

ICE and CBP agents will simply serve to layer the harms of the racist criminal legal system on top of those of the racist immigration framework.

"Having seen the horrific mistreatment of Haitian migrants at the border this past month, we are especially appalled to see DHS label migrants who attempt to cross the border outside of ports of entry as †threats to border security. With Title 42 in place, asylum seekers have virtually no other way to enter the country. The perpetuation of these false narratives is precisely what leads to the cruel treatment migrants experience at the border.

The release of these priorities falls squarely on the 25th anniversary of IIRIRA, an antiimmigrant law signed by President Clinton that vastly expanded mandatory detention and deportation and increased collusion between federal immigration agents and local law enforcement. Today and every day, communities hit hardest by the 'tough on crime approach of the 1990s continue to feel the impact of this system.

"We urge the Biden administration to hear the demands of our communities and take immediate and concrete steps to disentangle these systems; invest in communities; and keep families and communities together."

In June 2021, the National Immigration Project and its partners sent <u>a letter</u> signed by 156 organizations to Secretary of Homeland Security Alejandro Mayorkas urging DHS and all its components, including ICE and CBP, to change course on enforcement to protect families and communities and keep them whole. The National Immigration Project also released <u>The Human Costs of ICEs Enforcement Framework</u>, a report highlighting stories of community members who have been excluded from immigration relief due to DHSs interim enforcement framework under the Biden administration.

From: KELLEY, ANGELA (b)(6)

To: ROBINSON, BRENT (b)(6)

Subject: FW: Groups' statement on the priorities

Date: 2021/10/04 11:56:00

Priority: Urgent

Type: Note

Angela Maria Kelley Senior Immigration Counselor Office of the Secretary Department of Homeland Security

From: HINKEN, ANNA (b)(6)

**Sent:** Friday, Octobe<u>r</u> 1, 2021 12:52 PM

To: KELLEY, ANGELA (b)(6) ESSAHEB, KAMAL (b)(6)

Murray, Royce (b)(6)

Cc: MILLONA, EVA (b)(6)

**Subject:** Groups' statement on the priorities

Importance: High

Please see attached. I will compile a part 2 later today.

Most are to be expected. As always, a wait and see approach since a great deal will depend on implementation and consistency.

| KELLEY, ANGELA | (b)(6) | (b)(6) | (b)(6) | | (b)(6) | (b

	ESPINOSA, MARSHA (b)(6)		
From:	(b)(6)		
	CLAVEL, LISE (b)(6)		
	(b)(6)		
	HIGGINS, JENNIFER (b)(6)		
	(b)(6)		
	DASKAL, JENNIFER (b)(6)		
(	(b)(6)		
_	ULLOA, ISABELLA (b)(6)		
То:	(b)(6)		
	REZMOVIC, JEFFREY (b)(6)		
	(b)(6)		
	SILVERS, ROBERT (b)(6)		
	(b)(6)		
	FONG, HEATHER (b)(6)		
	(b)(6)		
Subject:	RE: NPR: The inquiry into border agents on horseback continues. Critics see	a 'broken'	system
	2021/11/07 13:19:21		
Priority:	Normal		
Туре:	Note		

I'll be in pajamas and off camera, but I will be there!

9:15? Going once......

From: CLAVEL, LISE (b)(6)			
Sent: Sunday, November 7,	2021 1:18 PM		
To: HIGGINS, JENNIFER (b)(6)		DASKAL, JENNIFER	
(b)(6)	ULLOA, ISABELLA (b	)(6)	ESPINOSA, MARSHA
(b)(6)	REZMOVIC, JEFFR	(b)(6)	SILVERS, ROBERT
(b)(6)	FONG, HEATHER (b)(6	)	
Subject: Re: NPR: The inquir	y into border agents or	n horseback continues. Critic	cs see a 'broken' system
That works for me From: HIGGINS, JENNIFER [b	)(6)		
Sent: Sunday, November 7,			
To: DASKAL, JENNIFER (b)(6)		CLAVEL, LISE (b)(6)	
ULLOA, ISABELLA (b)(6)		ESPINOSA, MARSHA	
(b)(6)	REZMOVIC, JEI	FREY (b)(6)	SILVERS,
ROBERT (b)(6)	FONG, H	EATHER (b)(6)	
Subject: RE: NPR: The inquir	v into border agents or	horseback continues, Critic	cs see a 'broken' system

France DACKAL JENIAUEED (bVC)
From: DASKAL, JENNIFER (b)(6)
Sent: Sunday, November 7, 2021 1:04 PM
To: HIGGINS, JENNIFER (b)(6) CLAVEL, LISE (b)(6) ULLOA,
ISABELLA (b)(6) ESPINOSA, MARSHA (b)(6)
REZMOVIC, JEFFREY (b)(6)  SILVERS, ROBERT (b)(6)
FONG, HEATHER (b)(6)
<b>Subject:</b> Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Hi guys, I can do before 7:30 or 9:15/9:30 (or later) Any way to do a bit earlier or later? Thanks,
Jen
From: HIGGINS, JENNIFER (b)(6)
<b>Sent:</b> Sunday, November 7, 2021 1:00:37 PM
To: CLAVEL, LISE (b)(6) ULLOA, ISABELLA (b)(6) ESPINOSA,
MARSHA (b)(6) DASKAL, JENNIFER (b)(6)
REZMOVIC, JEFFREY (b)(6) SILVERS, ROBERT (b)(6)
FONG, HEATHER (b)(6)
Subject: RE: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Subject: RE: NPR: The inquiry into border agents on norseback continues. Critics see a broken system
8pm sounds good to me.
From: CLAVEL, LISE (b)(6)
Sent: Sunday, November 7, 2021 12:58 PM
To: ULLOA, ISABELLA (b)(6) ESPINOSA, MARSHA
(b)(6) HIGGINS, JENNIFER (b)(6) DASKAL, JENNIFER
(b)(6) REZMOVIC, JEFFREY (b)(6) SILVERS, ROBERT
(b)(6) FONG, HEATHER (b)(6)
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Could we do 7:45 or 8 to allow for kid bedtime?
From: ULLOA, ISABELLA (b)(6)
<b>Sent:</b> Sunday, November 7, 2021 12:41:45 PM
To: ESPINOSA, MARSHA (b)(6) HIGGINS, JENNIFER
(b)(6) DASKAL, JENNIFER (b)(6) CLAVEL, LISE
(b)(6) REZMOVIC, JEFFREY (b)(6) SILVERS, ROBERT
(b)(6) FONG, HEATHER (b)(6)
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Adding Heather and Rob.
7 nm works for ma
7 pm works for me.
FOUNDS A MARSHA (INVS)
From: ESPINOSA, MARSHA (b)(6)
Sent: Sunday, November 7, 2021 12:13 PM

**To:** HIGGINS, JENNIFER; DASKAL, JENNIFER; CLAVEL, LISE; ULLOA, ISABELLA; REZMOVIC, JEFFREY **Subject:** RE: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system

7pm? Let n	e know	what	time	works	for	everv	one.
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From: HIGGINS, JENNIFER (b)(6)
Sent: Sunday, November 7, 2021 11:56 AM
To: ESPINOSA, MARSHA (b)(6) DASKAL, JENNIFER
(b)(6) ULLOA, ISABELLA
(b)(6) REZMOVIC, JEFFREY (b)(6)
<b>Subject:</b> Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Can we do later? I'd like to have a chunk of time to do some family stuff this afternoon given my
morning and a few other meetings this afternoon.
From: ESPINOSA, MARSHA (b)(6)
<b>Sent:</b> Sunday, November 7, 2021 11:52:59 AM
To: DASKAL, JENNIFER (b)(6) CLAVEL, LISE (b)(6)
HIGGINS, JENNIFER (b)(6)  ULLOA, ISABELLA (b)(6)
REZMOVIC, JEFFREY (b)(6)
Subject: RE: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Should we say 2pm today?
From: DASKAL, JENNIFER (b)(6)
Sent: Saturday, November 6, 2021 8:09 PM
To: CLAVEL, LISE (b)(6) HIGGINS, JENNIFER (b)(6) ULLOA
ISABELLA (b)(6) ESPINOSA, MARSHA (b)(6)
REZMOVIC, JEFFREY (b)(6)
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
I can do late Sunday or between 1 and 3.
From: CLAVEL, LISE (b)(6)
Sent: Saturday, November 6, 2021 1:58:47 PM
To: HIGGINS, JENNIFER (b)(6) DASKAL, JENNIFER
(b)(6) ULLOA, ISABELLA (b)(6) ESPINOSA, MARSHA
(b)(6) REZMOVIC, JEFFREY (b)(6)
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Sounds great. Can we include Luis Miranda as well who leads our OPA? Best times for me are 8pm or later either tonight or Sunday or tmrw between 1 and 3.
From: HIGGINS, JENNIFER (b)(6)  Sent: Saturday, November 6, 2021 1:02:38 PM

To: DASKAL, JENNIFER (b)(6)	ULLOA, ISABELLA	
(b)(6)	ESPINOSA, MARSHA (b)(6)	CLAVEL, LISE
(b)(6) RE:	ZMOVIC, JEFFREY (b)(6)	

Subject: RE: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system

Pulling together a few folks/threads on the issue. Lise sent the attached memo outlining all the work they are doing in this space, which is fantastic. In addition, CBP reached out to OPA about the engagement/announcement (below) which reflects our discussions so far. I think we need to think it through a bit more but it I think we mostly have consensus. Maybe we can have a quick call this weekend? (Also attaching a draft announcement of the engagement which I can explain further when we chat.)

\_\_\_\_\_

\_\_\_\_\_

From: MIRANDA, LUIS A (b)(6)

Sent: Thursday, November 4, 2021 7:17 PM

To: ESPINOSA, MARSHA (b)(6) MAIA SILVA, EDUARDO

(b)(6)

Subject: Media Roundtable: Accountability, Integrity, and Transparency

Marsha, we are planning a media roundtable with a select group of national reporters at CBP HQ, to include the Commissioner, and Office of Professional Responsibility leadership. The goal will be to establish a clearer understanding of the transparency and accountability measures CBP has in place, debunk current lines of criticism, and softening the ground ahead of the eventual horse patrol investigation (without commenting directly on it). Note, no active investigations or litigation will be discussed.

Below are details on the format, and topics, below that some of the extended talking points on these topics. The Commissioner had discussed this with S1, and it is being included in a memo to him as a follow up from that meeting. The memo reiterates an invitation to S1 to participate in the roundtable, possibly to deliver opening remarks. Of course, we will build this around his schedule if he is available and we can certainly adjust any of the details in coordination with you. Please let me know how we can move this forward quickly. We have an increasing number of inquiries on the Border Patrol CIT's specifically, but the broader transparency conversation illuminates those, so I would rather get this done at the earliest possible opportunity. Please let me know if I can provide any more detail or context, and we can also get on a call to talk through the details.

#### • Format:

 In-person, on-the-record roundtable with national media. No video cameras, but would be entirely on the record, and we would allow stills. We would welcome your participation to provide opening remarks.

#### • Topics:

- O Accountability and transparency framework, including an overview of how processes have evolved (such as the creation of the Office of Professional Responsibility) and the multi-tiered oversight framework. This includes how CBP investigates and reports use of force incidents and in-custody deaths. We believe there's good story to tell about the changes we've made in the last five years and walking through these changes and the current processes will be an important step forward with transparency.
- Debunking current lines of criticism, while acknowledging that the
  discipline process does fail us, and how we are working to improve
  through ongoing reviews, highlighting our new accountability and
  transparency website. This includes clarifying the role of Border Patrol
  investigative units.
- o Previewing upcoming transparency measures:
  - Body Cam policy updates and best practices
  - Vehicle pursuit policy

## **Key Points**

- CBP takes all allegations of employee misconduct seriously and strives to be as
  transparent as possible regarding the release of investigative information to the
  public. The DHS Office for Civil Rights and Civil Liberties provides oversight
  and investigation into allegations of civil rights violations, and we are working
  under the mandates of President Biden's equity orders and new Departmental
  initiatives to review policies, striving for a model of excellence.
- As part of the Department of Homeland Security (DHS), CBP has a multi-tiered oversight framework in place to address allegations of misconduct involving agency personnel. Allegations of serious and criminal misconduct are initially referred to the Office of Inspector General (OIG) and may be investigated by that office or CBP's Office of Professional Responsibility (OPR). Complaints involving mismanagement or less serious misconduct may also be assigned to fact finders trained by OPR within CBP's operational components.

- To help ensure key stakeholders, including the public, have insight into CBP's oversight processes, we have launched a new section on our website allowing easy access to a variety of relevant resources including our annual discipline report, employee arrest data, searchable information regarding use of force trends, the results of our National Use of Force Review Board, a copy of our procedures for reviewing in-custody deaths, and public statements regarding each such death during FY21. CBP employees and officers perform their duties with honor and distinction, and we will not tolerate corruption or abuse within our ranks.
- CBP stresses honor and integrity in every aspect of our mission and expects officers to adhere to the oath they take to uphold the laws of this country, whether on or off duty. CBP will not tolerate hateful, misogynist, or racist behavior or any conduct that is unbecoming of the honor we hold as public servants. DHS, including CBP, is participating in an internal review as directed by Secretary Mayorkas to identify and terminate intolerable prejudice, and to reform policies and training.
- DHS, including CBP, is participating in an internal review as directed by Secretary Mayorkas to identify and terminate intolerable prejudice, and to reform policies and training. CBP is working to review policies and to underscore the need to respect the dignity of every individual, fight against discrimination, safeguard civil rights and civil liberties, and increase transparency and accountability.
- Important reforms have been implemented over the past 11 years. First, in 2015, CBP established a new use of force review process which placed the Office of Professional Responsibility (OPR) in charge of overseeing all internal use of force reviews. Second, in early 2016, OPR gained statutory authority to conduct criminal and administrative investigations regarding CBP personnel.
- CBP's Office of Professional Responsibility (OPR) leads CBP's Use of Force Incident Team (UFIT) process, which includes a comprehensive review of incidents leading to the facts and circumstances being presented before CBP's National Use of Force Review Board (NUFRB). The NUFRB is comprised of voting members from CBP's operational components along with representatives of the Department of Homeland Security Office for Civil Rights and Civil Liberties as well as the U.S. Department of Justice Civil Rights Division. The NUFRB reviews serious use of force incidents to determine whether the actions of CBP personnel were consistent with agency policy as well as to identify any training, tactics, or policy issues requiring further review.

#### **Border Patrol CIT/CIIT**

- The U.S. Border Patrol maintains teams with specialized evidence collection capabilities across the southwest border. These teams consist of highly trained personnel available to respond around the clock to collect and process evidence related to CBP enforcement activities as well as critical incidents. In the case of serious incidents involving CBP personnel, members of these teams are sometimes called upon to assist investigators from CBP OPR and other local, state, and federal law enforcement agencies. This is a vitally important capability as many critical incidents involving CBP operations occur in remote locations where other agencies may be unwilling or unable to respond.
- The U.S. Border Patrol disbanded their critical incident team in San Diego several years ago. Critical incident response teams in other sectors focus only on collecting evidence related to crimes that the U.S. Border Patrol regularly interdicts such as drug smuggling, documenting incidents in which there has been property damage such as vehicle accidents or other similar liability, and lastly providing support to investigative agencies including CBP OPR, FBI, and other state and local agencies when reviewing critical incidents and use of force incidents involving CBP personnel.

V/R.

Luis.

Luis Miranda

Assistant Commissioner

Office of Public Affairs



From: DASKAL, JENNIFER (b)(6)
Sent: Saturday, November 6, 2021 12:35 PM
To: HIGGINS, JENNIFER (b)(6) ULLOA, ISABELLA (b)(6)
Subject: FW: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Privileged
Hi guys – I apologize if I lost the thread on this. Do you think we might be in a position to announce the
LECC subcommittee (or any other measures) this week.
Can discuss more later today or tomorrow.
Jen
Jennifer Daskal
Acting Principal Deputy General Counsel
Department of Homeland Security
(b)(6)
From: Mayorkas, Alejandro (b)(6)
Sent: Saturday, November 6, 2021 12:13 PM
To: ESPINOSA, MARSHA (b)(6)
Cc: HIGGINS, JENNIFER (b)(6) REZMOVIC, JEFFREY
(b)(6) ULLOA, ISABELLA (b)(6) DASKAL, JENNIFER
(b)(6)
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Thank you very much, Marsha.
Ali
Alejandro N. Mayorkas
Secretary
From: ESPINOSA, MARSHA (b)(6)
Sent: Saturday, November 6, 2021 12:01:05 PM
<b>To:</b> Mayorkas, Alejandro (b)(6)
Cc: HIGGINS, JENNIFER (b)(6) REZMOVIC, JEFFREY
(b)(6) ULLOA, ISABELLA (b)(6) DASKAL, JENNIFER
(b)(6)

Subject: FW: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system

Flagging. We weren't aware this piece was coming, but we have not been able to say much about the investigation. CBP has seen a number of these types of pieces the last couple weeks and is interested in having a roundtable with reporters to explain the investigation process.

NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system (Joel Rose)

Images of Border Patrol agents on horseback clashing with Haitian migrants in Del Rio, Texas, were still in heavy rotation on cable news when the Homeland Security secretary promised a swift investigation.

"It will be completed in days, and not weeks," Alejandro Mayorkas told lawmakers.

But people who knew the Border Patrol — and who've tried to hold its agents accountable for alleged misconduct — knew how hard that would be.

"I chuckled," said James Wong, a former deputy assistant commissioner for internal affairs at the U.S. Customs and Border Protection.

More than six weeks later, the Biden administration has yet to announce any disciplinary action. That comes as no surprise to Wong. Before he retired in 2011, it was his job to look into allegations of misconduct against Border Patrol agents.

"They treated everybody else as an outsider," Wong said in an interview. "I was often told when I would question some of their decisions that I didn't understand, because I had never worn green."

Critics of the Border Patrol say misconduct investigations move slowly, with little transparency, and rarely deliver more than a slap on the wrist.

"These investigation and discipline systems at the border agencies are really broken and need a complete overhaul," said Clara Long, an immigrants' rights advocate with the nonprofit Human Rights Watch.

The Department of Homeland Security won't say when the investigation will be finished — but does pledge to be transparent about its findings.

The last time the Border Patrol faced this much scrutiny was in the summer of 2019. Agents were caught using a private Facebook group to share posts and images that mocked dead migrants and sitting lawmakers, including sexualized images of Rep. Alexandria Ocasio-Cortez.

"It was horrendous," said Mark Morgan, the acting commissioner of CBP at the time in an interview with NPR's All Things Considered.

"Some of the images that were out there — absolutely horrendous, wrong and not consistent with the way that CBP, or specifically Border Patrol, conducts themselves — period," Morgan said.

An internal disciplinary board at CBP found that 60 agents committed misconduct, and recommended firing two dozen of them. But only two were ultimately fired, according to a recent report by the House Oversight and Reform Committee. Most of the other agents are now back at work.

"There's a lack of accountability and a lack of oversight," said Daniel Martínez, a sociologist at the University of Arizona who's studied how CBP treats migrants in its custody. "DHS seems to be operating behind this veil of secrecy. And it seems to be this cycle that keeps repeating itself," Martínez said in an interview.

The Border Patrol's critics worry that's happening again with the investigation into Del Rio.

Images of Border Patrol agents on horseback confronting Black migrants, mostly from Haiti, drew widespread condemnation — even from the top ranks of the Biden administration.

"It's outrageous. I promise you, those people will pay," President Biden said during a news briefing.

But those agents on horseback have their defenders, too.

"The agents were sent out there to do a specific job. They did exactly what they were sent out there to do," said Brandon Judd, the president of the union that represents Border Patrol agents.

Judd says the agents were swinging their horses' reins, not whips, and that no migrants were actually injured. He argues the investigation has been flawed from the start, because high-ranking officials within the administration weighed in early on.

"Those investigators have no choice but to find wrongdoing, which is why it's taking so long," Judd said in an interview.

If you talk to critics of the Border Patrol, they actually agree with Judd about one thing: The way agents in Del Rio acted toward migrants is not really unusual.

"Some of the conduct that we saw in Del Rio, while obviously atrocious to people who saw those photos, is pretty much within normal agency practice," said Clara Long with the nonprofit Human Rights Watch.

Her group released a report last month documenting more than 150 complaints of misconduct at CBP, including serious allegations of physical and sexual abuse of migrants in custody. But it's not clear if those complaints were ever investigated, because CBP won't say.

"If the Border Patrol was a police department operating somewhere in the United States, the Department of Justice would be all over it," Long said.

But former CBP commissioner Gil Kerlikowske, who led the agency during the Obama administration, argues it's a mistake to blame all Border Patrol agents for the actions in Del Rio.

"That just kind of misses the mark," Kerlikowske told NPR. "There are people that shouldn't be there. There are people that need to be disciplined. But it really isn't the culture ... of the Border Patrol that has resulted in some of these actions that have been seen so publicly."

Still, other former CBP officials say there are deeper problems at the Border Patrol. James Wong, who used to work in internal affairs at CBP, says the Border Patrol sees itself less as a law enforcement agency, and more as a "paramilitary force."

"I've had Border Patrol agents in the past tell me that they will not retreat, and they will not give up one foot of American soil," Wong said. "They view these people as the enemy. And to me, that's troubling."

The Border Patrol's critics say that's what the images from Del Rio reveal. And why they don't expect the investigation to make much of a difference — no matter how or when it ends.

#### ###

	ESPINOSA, MARSHA (b)(6)	
Sender:	(b)(6)	
	CLAVEL, LISE (b)(6)	
[7]	b)(6)	
ľ		_
_	HIGGINS, JENNIFER (b)(6)	
	(b)(6)	
l	DASKAL, JENNIFER (b)(6)	
	(b)(6)	
l	ULLOA, ISABELLA (b)(6)	
Recipient:	(b)(6)	
ſ	REZMOVIC, JEFFREY (b)(6) (b)(6)	
	SILVERS, ROBERT (b)(6)	
	(b)(6)	
	FONG, HEATHER (b)(6)	
	(b)(6)	
Sent Date:	2021/11/07 13:19:19	
Delivered Date:	2021/11/07 13:19:21	

	DAG(A) JENNYEED (b)(6)
From:	DASKAL, JENNIFER (b)(6)
	CLAVEL, LISE (b)(6)
	(b)(6)
	HIGGINS, JENNIFER(b)(6)
	(b)(6)
	ULLOA, ISABELLA (b)(6) (b)(6)
	ESPINOSA, MARSHA (b)(6)
10:	(b)(6)
	REZMOVIC, JEFFREY (b)(6)
	(b)(6)
	SILVERS, ROBERT (b)(6)
	(b)(6)
	FONG, HEATHER (b)(6)
	(b)(6)
Subject:	Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Date:	2021/11/07 13:52:13
Priority:	Normal
Туре:	Note
Thank you all!  From: CLAVEL, LISE ( Sent: Sunday, Nover	b)(6) nber 7, 2021 1:21:18 PM
To: HIGGINS, JENNIF	ER (b)(6) DASKAL, JENNIFER
(b)(6)	ULLOA, ISABELLA (b)(6) ESPINOSA, MARSHA
(b)(6)	REZMOVIC, JEFFREY (b)(6) SILVERS, ROBERT
(b)(6)	FONG, HEATHER (b)(6)
Subject: Re: NPR: Th	e inquiry into border agents on horseback continues. Critics see a 'broken' system
	umber of (joyful) phone calls I have done on camera and in PJs with you guys.
From: HIGGINS, JENI	
	nber 7, 2021 1:09:25 PM
To: DASKAL, JENNIFE	
ULLOA, ISABELLA (b)(	
(b)(6)	REZMOVIC, JEFFREY (b)(6) SILVERS,
ROBERT (b)(6)	FONG, HEATHER (b)(6)
Subject: RE: NPR: Th	e inquiry into border agents on horseback continues. Critics see a 'broken' system
9:15? Going once	

From: DASKAL, JENNIFER (b)(6)
Sent: Sunday, November 7, 2021 1:04 PM

To: HIGGINS, JENNIFER (b)(6)	CLAVEL, LISE (b)(6)	ULLOA,
ISABELLA (b)(6)	ESPINOSA, MARSHA (b)(6)	
REZMOVIC, JEFFREY (b)(6)	SILVERS, ROBERT (b)(6)	
FONG, HEATHER (b)(6)		
Subject: Re: NPR: The inquiry	into border agents on horseback continues. Critic	cs see a 'broken' system
Hi guys, I can do before 7:30 d Jen	or 9:15/9:30 (or later) Any way to do a bit earlier	or later? Thanks,
From: HIGGINS, JENNIFER (b)(	6)	
Sent: Sunday, November 7, 2		
To: CLAVEL, LISE (b)(6)	ULLOA, ISABELLA (b)(6)	ESPINOSA,
MARSHA (b)(6)	DASKAL, JENNIFER (b)(6)	
REZMOVIC, JEFFREY (b)(6)	SILVERS, ROBERT (b)(6)	
FONG, HEATHER (b)(6)		
	into border agents on horseback continues. Critic	cs see a 'broken' system
	-	
8pm sounds good to me.		
From: CLAVEL, LISE (b)(6)		
Sent: Sunday, November 7, 2	021 12:58 PM	
To: ULLOA, ISABELLA (b)(6)	ESPINOSA, MARSHA	
(b)(6)	HIGGINS, JENNIFER (b)(6)	DASKAL, JENNIFER
(b)(6)	REZMOVIC, JEFFREY (b)(6)	SILVERS, ROBERT
(b)(6)	FONG, HEATHER (b)(6)	]
Subject: Re: NPR: The inquiry	into border agents on horseback continues. Critic	cs see a 'broken' system
Could we do 7:45 or 8 to allow	w for kid bedtime?	
From: ULLOA, ISABELLA (b)(6)		
Sent: Sunday, November 7, 2	021 12:41:45 PM	
To: ESPINOSA, MARSHA (b)(6)	HIGGINS, JENNIFE	ER
(b)(6)	DASKAL, JENNIFER (b)(6)	CLAVEL, LISE
	EZMOVIC, JEFFREY (b)(6)	SILVERS, ROBERT
(b)(6)	FONG, HEATHER (b)(6)	
Subject: Re: NPR: The inquiry	into border agents on horseback continues. Critic	cs see a 'broken' system
Adding Heather and Rob.		
7 pm works for me.		
From: ESPINOSA, MARSHA (b) Sent: Sunday, November 7, 20		
••	AL, JENNIFER; CLAVEL, LISE; ULLOA, ISABELLA; RE	ZMOVIC, JEFFREY

Subject: RE: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system

7pm? Let me know what time works for everyone.

From: HIGGINS, JENNIFER (b)(6)
Sent: Sunday, November 7, 2021 11:56 AM
To: ESPINOSA, MARSHA (b)(6) DASKAL, JENNIFER
(b)(6) CLAVEL, LISE (b)(6) ULLOA, ISABELLA
(b)(6) REZMOVIC, JEFFREY (b)(6)
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Can we do later? I'd like to have a chunk of time to do some family stuff this afternoon given my
morning and a few other meetings this afternoon.
From: ESPINOSA, MARSHA (b)(6)
Sent: Sunday, November 7, 2021 11:52:59 AM
To: DASKAL, JENNIFER (b)(6) CLAVEL, LISE (b)(6)
HIGGINS, JENNIFER (b)(6) ULLOA, ISABELLA (b)(6)
REZMOVIC, JEFFREY (b)(6)
Subject: RE: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Should we say 2pm today?
From: DASKAL, JENNIFER (b)(6)
Sent: Saturday, November 6, 2021 8:09 PM
To: CLAVEL, LISE (b)(6) HIGGINS, JENNIFER (b)(6) ULLOA,
ISABELLA (b)(6) ESPINOSA, MARSHA (b)(6)
REZMOVIC, JEFFREY (b)(6)
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
I can do late Sunday or between 1 and 3.
From: CLAVEL, LISE (b)(6)
Sent: Saturday, November 6, 2021 1:58:47 PM
To: HIGGINS, JENNIFER (b)(6) DASKAL, JENNIFER
(b)(6) ULLOA, ISABELLA (b)(6) ESPINOSA, MARSHA
(b)(6) REZMOVIC, JEFFREY (b)(6)
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system
Sounds great. Can we include Luis Miranda as well who leads our OPA? Best times for me are 8pm or
later either tonight or Sunday or tmrw between 1 and 3.
From: HIGGINS, JENNIFER (b)(6)
Sent: Saturday, November 6, 2021 1:02:38 PM
To: DASKAL, JENNIFER (b)(6) ULLOA, ISABELLA
(b)(6) ESPINOSA, MARSHA (b)(6) CLAVEL, LISE

(b)(6)	REZMOVIC, JEFFREY	(b)(6)

Subject: RE: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system

Pulling together a few folks/threads on the issue. Lise sent the attached memo outlining all the work they are doing in this space, which is fantastic. In addition, CBP reached out to OPA about the engagement/announcement (below) which reflects our discussions so far. I think we need to think it through a bit more but it I think we mostly have consensus. Maybe we can have a quick call this weekend? (Also attaching a draft announcement of the engagement which I can explain further when we chat.)

\_\_\_\_\_

From: MIRANDA, LUIS A (b)(6)

Sent: Thursday, November 4, 2021 7:17 PM

To: ESPINOSA, MARSHA (b)(6) MAIA SILVA, EDUARDO

(b)(6)

Subject: Media Roundtable: Accountability, Integrity, and Transparency

Marsha, we are planning a media roundtable with a select group of national reporters at CBP HQ, to include the Commissioner, and Office of Professional Responsibility leadership. The goal will be to establish a clearer understanding of the transparency and accountability measures CBP has in place, debunk current lines of criticism, and softening the ground ahead of the eventual horse patrol investigation (without commenting directly on it). Note, no active investigations or litigation will be discussed.

Below are details on the format, and topics, below that some of the extended talking points on these topics. The Commissioner had discussed this with S1, and it is being included in a memo to him as a follow up from that meeting. The memo reiterates an invitation to S1 to participate in the roundtable, possibly to deliver opening remarks. Of course, we will build this around his schedule if he is available and we can certainly adjust any of the details in coordination with you. Please let me know how we can move this forward quickly. We have an increasing number of inquiries on the Border Patrol CIT's specifically, but the broader transparency conversation illuminates those, so I would rather get this done at the earliest possible opportunity. Please let me know if I can provide any more detail or context, and we can also get on a call to talk through the details.

#### • Format:

 In-person, on-the-record roundtable with national media. No video cameras, but would be entirely on the record, and we would allow stills. We would welcome your participation to provide opening remarks.

#### • Topics:

- O Accountability and transparency framework, including an overview of how processes have evolved (such as the creation of the Office of Professional Responsibility) and the multi-tiered oversight framework. This includes how CBP investigates and reports use of force incidents and in-custody deaths. We believe there's good story to tell about the changes we've made in the last five years and walking through these changes and the current processes will be an important step forward with transparency.
- Debunking current lines of criticism, while acknowledging that the discipline process does fail us, and how we are working to improve through ongoing reviews, highlighting our new accountability and transparency website. This includes clarifying the role of Border Patrol investigative units.
- o Previewing upcoming transparency measures:
  - Body Cam policy updates and best practices
  - Vehicle pursuit policy

## **Key Points**

- CBP takes all allegations of employee misconduct seriously and strives to be as
  transparent as possible regarding the release of investigative information to the
  public. The DHS Office for Civil Rights and Civil Liberties provides oversight
  and investigation into allegations of civil rights violations, and we are working
  under the mandates of President Biden's equity orders and new Departmental
  initiatives to review policies, striving for a model of excellence.
- As part of the Department of Homeland Security (DHS), CBP has a multi-tiered oversight framework in place to address allegations of misconduct involving agency personnel. Allegations of serious and criminal misconduct are initially referred to the Office of Inspector General (OIG) and may be investigated by that office or CBP's Office of Professional Responsibility (OPR). Complaints involving mismanagement or less serious misconduct may also be assigned to fact finders trained by OPR within CBP's operational components.
- To help ensure key stakeholders, including the public, have insight into CBP's oversight processes, we have launched a new section on our website allowing

easy access to a variety of relevant resources including our annual discipline report, employee arrest data, searchable information regarding use of force trends, the results of our National Use of Force Review Board, a copy of our procedures for reviewing in-custody deaths, and public statements regarding each such death during FY21. CBP employees and officers perform their duties with honor and distinction, and we will not tolerate corruption or abuse within our ranks.

- CBP stresses honor and integrity in every aspect of our mission and expects
  officers to adhere to the oath they take to uphold the laws of this country, whether
  on or off duty. CBP will not tolerate hateful, misogynist, or racist behavior or any
  conduct that is unbecoming of the honor we hold as public servants. DHS,
  including CBP, is participating in an internal review as directed by Secretary
  Mayorkas to identify and terminate intolerable prejudice, and to reform policies
  and training.
- DHS, including CBP, is participating in an internal review as directed by Secretary Mayorkas to identify and terminate intolerable prejudice, and to reform policies and training. CBP is working to review policies and to underscore the need to respect the dignity of every individual, fight against discrimination, safeguard civil rights and civil liberties, and increase transparency and accountability.
- Important reforms have been implemented over the past 11 years. First, in 2015, CBP established a new use of force review process which placed the Office of Professional Responsibility (OPR) in charge of overseeing all internal use of force reviews. Second, in early 2016, OPR gained statutory authority to conduct criminal and administrative investigations regarding CBP personnel.
- CBP's Office of Professional Responsibility (OPR) leads CBP's Use of Force Incident Team (UFIT) process, which includes a comprehensive review of incidents leading to the facts and circumstances being presented before CBP's National Use of Force Review Board (NUFRB). The NUFRB is comprised of voting members from CBP's operational components along with representatives of the Department of Homeland Security Office for Civil Rights and Civil Liberties as well as the U.S. Department of Justice Civil Rights Division. The NUFRB reviews serious use of force incidents to determine whether the actions of CBP personnel were consistent with agency policy as well as to identify any training, tactics, or policy issues requiring further review.

#### **Border Patrol CIT/CIIT**

- The U.S. Border Patrol maintains teams with specialized evidence collection capabilities across the southwest border. These teams consist of highly trained personnel available to respond around the clock to collect and process evidence related to CBP enforcement activities as well as critical incidents. In the case of serious incidents involving CBP personnel, members of these teams are sometimes called upon to assist investigators from CBP OPR and other local, state, and federal law enforcement agencies. This is a vitally important capability as many critical incidents involving CBP operations occur in remote locations where other agencies may be unwilling or unable to respond.
- The U.S. Border Patrol disbanded their critical incident team in San Diego several years ago. Critical incident response teams in other sectors focus only on collecting evidence related to crimes that the U.S. Border Patrol regularly interdicts such as drug smuggling, documenting incidents in which there has been property damage such as vehicle accidents or other similar liability, and lastly providing support to investigative agencies including CBP OPR, FBI, and other state and local agencies when reviewing critical incidents and use of force incidents involving CBP personnel.

V/R,

Luis.

Luis Miranda

Assistant Commissioner

Office of Public Affairs



From: DASKAL, JENNIFER (b)(6)

Sent: Saturday, November 6, 2021 12:35 PM

To: HIGGINS, JENNIFER (b)(6) ULLOA, ISABELLA (b)(6)	
Subject: FW: NPR: The inquiry into border agents on horseback continues. Criti	cs see a 'broken' system
•	•
Privileged	
$\operatorname{Hi}\nolimits$ guys – $\operatorname{I}\nolimits$ apologize if $\operatorname{I}\nolimits$ lost the thread on this. Do you think we might be in a p	osition to announce the
LECC subcommittee (or any other measures) this week.	
Can discuss more later today or tomorrow.	
To a	
Jen	
Jennifer Daskal	
Acting Principal Deputy General Counsel	
Department of Homeland Security	
(b)(6)	
Frame Mayorkes Alsiandra (b)(6)	
From: Mayorkas, Alejandro (b)(6)	
Sent: Saturday, November 6, 2021 12:13 PM	
To: ESPINOSA, MARSHA (b)(6)	
Cc: HIGGINS, JENNIFER (b)(6) REZMOVIC, JEFFREY (b)(6) ULLOA, ISABELLA (b)(6)	TRACKAL JENNIJEER
	DASKAL, JENNIFER
(b)(6)	an and a library and an arterna
Subject: Re: NPR: The inquiry into border agents on horseback continues. Critic	is see a 'broken' system
Thank you very much, Marsha.	
Ali	
All	
Alejandro N. Mayorkas	
Secretary	
From: ESPINOSA, MARSHA (b)(6)	
<b>Sent:</b> Saturday, November 6, 2021 12:01:05 PM	
To: Mayorkas, Alejandro (b)(6)	
Cc: HIGGINS, JENNIFER (b)(6) REZMOVIC, JEFFREY	
(b)(6) ULLOA, ISABELLA (b)(6)	DASKAL, JENNIFER
(b)(6)	
Subject: FW: NPR: The inquiry into horder agents on horseback continues. Criti	cs see a 'hroken' system

**Subject:** FW: NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system'

Flagging. We weren't aware this piece was coming, but we have not been able to say much about the investigation. CBP has seen a number of these types of pieces the last couple weeks and is interested in having a roundtable with reporters to explain the investigation process.

NPR: The inquiry into border agents on horseback continues. Critics see a 'broken' system (Joel Rose)

Images of Border Patrol agents on horseback clashing with Haitian migrants in Del Rio, Texas, were still in heavy rotation on cable news when the Homeland Security secretary promised a swift investigation.

"It will be completed in days, and not weeks," Alejandro Mayorkas told lawmakers.

But people who knew the Border Patrol — and who've tried to hold its agents accountable for alleged misconduct — knew how hard that would be.

"I chuckled," said James Wong, a former deputy assistant commissioner for internal affairs at the U.S. Customs and Border Protection.

More than six weeks later, the Biden administration has yet to announce any disciplinary action. That comes as no surprise to Wong. Before he retired in 2011, it was his job to look into allegations of misconduct against Border Patrol agents.

"They treated everybody else as an outsider," Wong said in an interview. "I was often told when I would question some of their decisions that I didn't understand, because I had never worn green."

Critics of the Border Patrol say misconduct investigations move slowly, with little transparency, and rarely deliver more than a slap on the wrist.

"These investigation and discipline systems at the border agencies are really broken and need a complete overhaul," said Clara Long, an immigrants' rights advocate with the nonprofit Human Rights Watch.

The Department of Homeland Security won't say when the investigation will be finished — but does pledge to be transparent about its findings.

The last time the Border Patrol faced this much scrutiny was in the summer of 2019. Agents were caught using a private Facebook group to share posts and images that mocked dead migrants and sitting lawmakers, including sexualized images of Rep. Alexandria Ocasio-Cortez.

"It was horrendous," said Mark Morgan, the acting commissioner of CBP at the time in an interview with NPR's All Things Considered.

"Some of the images that were out there — absolutely horrendous, wrong and not consistent with the way that CBP, or specifically Border Patrol, conducts themselves — period," Morgan said.

An internal disciplinary board at CBP found that 60 agents committed misconduct, and recommended firing two dozen of them. But only two were ultimately fired, according to a recent report by the House Oversight and Reform Committee. Most of the other agents are now back at work.

"There's a lack of accountability and a lack of oversight," said Daniel Martínez, a sociologist at the University of Arizona who's studied how CBP treats migrants in its custody. "DHS seems to be operating behind this veil of secrecy. And it seems to be this cycle that keeps repeating itself," Martínez said in an interview.

The Border Patrol's critics worry that's happening again with the investigation into Del Rio.

Images of Border Patrol agents on horseback confronting Black migrants, mostly from Haiti, drew widespread condemnation — even from the top ranks of the Biden administration.

"It's outrageous. I promise you, those people will pay," President Biden said during a news briefing.

But those agents on horseback have their defenders, too.

"The agents were sent out there to do a specific job. They did exactly what they were sent out there to do," said Brandon Judd, the president of the union that represents Border Patrol agents.

Judd says the agents were swinging their horses' reins, not whips, and that no migrants were actually injured. He argues the investigation has been flawed from the start, because high-ranking officials within the administration weighed in early on.

"Those investigators have no choice but to find wrongdoing, which is why it's taking so long," Judd said in an interview.

If you talk to critics of the Border Patrol, they actually agree with Judd about one thing: The way agents in Del Rio acted toward migrants is not really unusual.

"Some of the conduct that we saw in Del Rio, while obviously atrocious to people who saw those photos, is pretty much within normal agency practice," said Clara Long with the nonprofit Human Rights Watch.

Her group released a report last month documenting more than 150 complaints of misconduct at CBP, including serious allegations of physical and sexual abuse of migrants in custody. But it's not clear if those complaints were ever investigated, because CBP won't say.

"If the Border Patrol was a police department operating somewhere in the United States, the Department of Justice would be all over it," Long said.

But former CBP commissioner Gil Kerlikowske, who led the agency during the Obama administration, argues it's a mistake to blame all Border Patrol agents for the actions in Del Rio.

"That just kind of misses the mark," Kerlikowske told NPR. "There are people that shouldn't be there. There are people that need to be disciplined. But it really isn't the culture ... of the Border Patrol that has resulted in some of these actions that have been seen so publicly."

Still, other former CBP officials say there are deeper problems at the Border Patrol. James Wong, who used to work in internal affairs at CBP, says the Border Patrol sees itself less as a law enforcement agency, and more as a "paramilitary force."

"I've had Border Patrol agents in the past tell me that they will not retreat, and they will not give up one foot of American soil," Wong said. "They view these people as the enemy. And to me, that's troubling."

The Border Patrol's critics say that's what the images from Del Rio reveal. And why they don't expect the investigation to make much of a difference — no matter how or when it ends.

## ###

	DASKAL, JENNIFER (b)(6)
Sender:	(b)(6)
	(b)(6)
	CLAVEL, LISE (b)(6) (b)(6)
	HIGGINS, JENNIFER (b)(6)
	(b)(6)
	ULLOA, ISABELLA (b)(6)
	(b)(6)
	ESPINOSA, MARSHA (b)(6)
Recipient:	(b)(6)
	REZMOVIC, JEFFREY (b)(6)
	(b)(6)
	SILVERS, ROBERT (b)(6)
	(b)(6)
	FONG, HEATHER (h)/6)
	(b)(6)
Sent Date:	2021/11/07 13:52:11
Delivered Date:	2021/11/07 13:52:13

DONALD M. PAYNE, JR.

10TH DISTRICT, NEW JERSEY

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

CHAIRMAN

SUBCOMMITTEE ON BAILBOADS. PIPELINES, AND HAZARDOUS MATERIALS

SUBCOMMITTEE ON AVIATION

COMMITTEE ON HOMELAND SECURITY

SUBCOMMITTEE ON EMERGENCY PREPAREDNESS. RESPONSE, AND RECOVERY SUBCOMMITTEE ON TRANSPORTATION

AND MARITIME SECURITY SUBCOMMITTEE ON OVERSIGHT, MANAGEMENT AND ACCOUNTABILITY

## Congress of the United States

House of Representatives

Washington, DC 20515-3010

WASHINGTON OFFICE

106 CANNON HOUSE OFFICE BUILDING WASHINGTON, DC 20515 (202) 225-3436

DISTRICT OFFICES

LEROY SMITH PUBLIC SAFETY BUILDING 60 NELSON PLACE, 14TH FLOOR NEWARK, NJ 07102 (973) 645-3213

253 MARTIN LUTHER KING DRIVE JERSEY CITY, NJ 07305 (201) 369-0392

> 1455 LIBERTY AVENUE HILLSIDE, NJ 07205 (862) 229-2994

October 26, 2021

The Honorable Alejandro Mayorkas Secretary United States Department of Homeland Security 2801 Nebraska Avenue, NW Washington, DC 20528

RECEIVED By ESEC at 10:12 am, Oct 28, 2021

## Dear Secretary Mayorkas:

Last month, photos and videos showed United States Border Patrol agents on horseback using reins as whips to prevent Haitian migrants from coming across the Rio Grande into the United States, as if these individuals were wild cattle being herded. Agents were caught on video using profanity towards Haitian families who were legally seeking asylum in the United States.

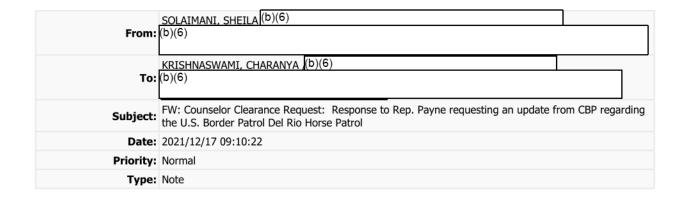
On September 20, 2021, the Department of Homeland Security announced that Customs & Border Protection Office of Professional Responsibility would launch a formal investigation into the actions of these Border Patrol agents. I am pleased to know that additional personnel from the Office of Professional Responsibility are now on site full-time to ensure Border Patrol agents treat every immigrant with dignity and respect.

To guarantee that these actions will lead to meaningful results, I respectfully request an update on the status of this investigation and what, if any policy changes will be implemented to prevent behavior like this from happening again.

Thank you for your immediate attention to this important issue and I look forward to hearing from you on this pending matter.

Respectfully,

Donald M. Payne, Jr. Member of Congress



Good morning,

We are tracking this tasker due today.

From: SOLAIMANI, SHEILA

Sent: Thursday, December 16, 2021 4:58 PM

To: CHARANYA KRISHNASWAMI (b)(6)

(b)(6)

**Subject:** FW: Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol

Hope you had a great day! Flagging this one tasker due tomorrow. The rest are due next week – aka don't worry ab it today or tomorrow.

From: SOLAIMANI, SHEILA

Sent: Wednesday, December 15, 2021 5:34 PM

To: CHARANYA KRISHNASWAMI (b)(6)

(b)(6)

**Subject:** FW: Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol

Charanya,

This is the response I had messaged you about – the draft response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol. The response focuses heavily on OPR and OIG. Let me know if you have any edits or recommend another counselor review.

Thanks!

From: Mueller, Pieter (b)(6)				
Sent: Wednesday, December 15, 20	021 1:00 PM			
To: SOLAIMANI, SHEILA (b)(6)		]		
Cc: O'CONNOR, KIMBERLY (b)(6)		В	lackwell, Juliana	
(b)(6)	Fauquet, Stephanie	(b)(6)		ESEC-

External Liaison (b)(6)

**Subject:** Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol

Good afternoon Sheila,

Please find attached for your review the incoming letter, cover memo and draft response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol

This response was drafted by CBP for Deputy Commissioner Miller's signature and has been cleared by the following Components:

- • PRIV 11/9/21
- • MGMT 11/19/21
- • OPA 11/22/21
- • OLA 11/22/21
- PLCY 11/23/21
- • OPS 11/23/21
- • OGC 12/1/21

Please advise of your clearance or anything we may assist with.

- • Deadline/Time sensitivities: Clearance requested by 12/17
- • Draft Received by ESEC: 12/15/21
- • Signature Level: CBP Signature
- Next Step: Package for DCOS/COS

Thanks,

Pieter

Pieter Mueller

**External Team Lead** 

Office of the Executive Secretary

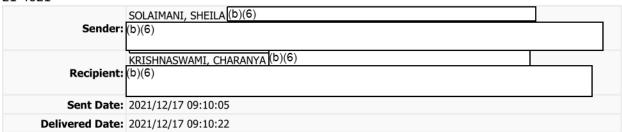
U.S. Department of Homeland Security

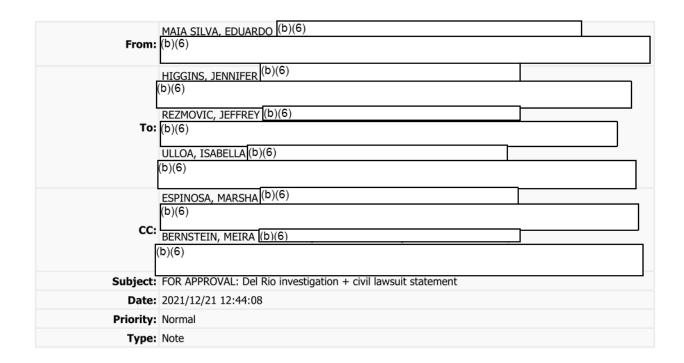
Desk:(b)(6) Cell:(b)(6)

(b)(6)

#### 1222902

21-4621





#### Good afternoon -

We have received inquiries on the attached lawsuit filed by a group of Haitian migrants describing their encounters with Border Patrol agents and allegation that we did not put the humanitarian resources in place ahead of the surge in Del Rio. Below for your review is a statement and background we would like to provide in response. We will also provide this to the White House ahead of the press briefing today.

This has been approved by:

- • Tom Jawetz, Rene Browne, Laura Smith (OGC)
- • Blas Nunez-Neto

#### Do you approve?

#### DHS STATEMENT

DHS does not comment on pending litigation.

As Secretary Mayorkas has said, DHS does not tolerate the abuse of migrants in our custody and we take these allegations very seriously. DHS remains committed to continuing to conduct a thorough, independent, and objective investigation. DHS will share information, as available, consistent with the need to protect the integrity of the investigation and individuals' privacy.

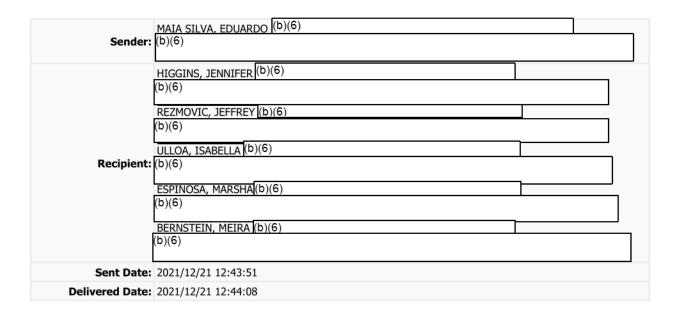
#### **BACKGROUND**

The situation in Del Rio resulted from the unprecedented movement of large numbers of individuals who traveled to a single point of the border within a matter of days. The Department's humanitarian and operational response was swift, immediately deploying personnel, basic services, food and drinking water, clothing, transportation, and medical

resources. The response also included collaboration with non-governmental organizations, civil society stakeholders, and state and local government officials.

Please see  $\underline{\text{here}}$  for the latest on the investigation of horse patrol activity in Del Rio, Texas on September 19, 2021.

Thank you, Eduardo



# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAITIAN BRIDGE ALLIANCE, c/o INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204 Telephone: +1 503 922-3042

Telephone: +1 503 922-3042 Facsimile: +1 503-882-0281;

MIRARD JOSEPH and MADELEINE PROSPERE, citizens of Haiti, c/o INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204 Telephone: +1 503 922-3042

Telephone: +1 503 922-3042 Facsimile: +1 503-882-0281;

MAYCO CELON and VERONIQUE CASSONELL, citizens of Haiti, c/o INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204
Telephone: +1 503 922-3042

Telephone: +1 503 922-3042 Facsimile: +1 503-882-0281;

WILSON DOE, citizen of Haiti, c/o INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204 Telephone: +1 503 922-3042

Telephone: +1 503 922-3042 Facsimile: +1 503-882-0281;

JACQUES DOE, citizen of Haiti, c/o INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204 Telephone: +1 503 922-3042

Facsimile: +1 503-882-0281;

ESTHER and EMMANUEL DOE, citizens of Haiti c/o INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204

Civil Action No.

Telephone: +1 503 922-3042 Facsimile: +1 503-882-0281;

SAMUEL and SAMENTHA DOE, citizens of Haiti, c/o INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204

Telephone: +1 503 922-3042 Facsimile: +1 503-882-0281;

PAUL DOE, citizen of Haiti, c/o INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204

Telephone: +1 503 922-3042 Facsimile: +1 503-882-0281

Plaintiffs,

v.

JOSEPH R. BIDEN, PRESIDENT OF THE UNITED STATES, in his official capacity; 1600 Pennsylvania Avenue NW Washington, DC 20500;

ALEJANDRO N. MAYORKAS, SECRETARY OF HOMELAND SECURITY, in his official capacity;
Department of Homeland Security

245 Murray Lane SW Washington, DC 20528;

U.S. DEPARTMENT OF HOMELAND SECURITY 245 Murray Lane SW Washington, DC 20528;

CHRIS MAGNUS, COMMISSIONER FOR U.S. CUSTOMS AND BORDER PROTECTION, in his official capacity;
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229;

WILLIAM A. FERRARA, EXECUTIVE ASSISTANT COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION'S OFFICE OF FIELD OPERATIONS, in his official capacity; CBP Office of Field Operations 1300 Pennsylvania Ave. NW Washington, DC 20229;

RAUL L. ORTIZ, CHIEF OF U.S. BORDER PATROL, in his official capacity; U.S. Border Patrol 1300 Pennsylvania Ave. NW Washington, DC 20229;

U.S. CUSTOMS AND BORDER PROTECTION, Office of Chief Counsel 1300 Pennsylvania Avenue, Suite 4.4-B Washington, D.C. 20229;

TAE D. JOHNSON, ACTING DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, in his official capacity; U.S. Immigration and Customs Enforcement, 500 12th Street SW Washington, DC 20536;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, 500 12th Street SW Washington, DC 20536;

XAVIER BECERRA, SECRETARY OF HEALTH AND HUMAN SERVICES, in his official capacity; U.S. Department of Health and Human Services Hubert H. Humphrey Building 200 Independence Ave. SW Washington, DC 20201;

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Hubert H. Humphrey Building 200 Independence Ave. SW Washington, DC 20201; ROCHELLE P. WALENSKY, DIRECTOR OF CENTERS FOR DISEASE CONTROL AND PREVENTION, in her official capacity; Centers for Disease Control and Prevention 1600 Clifton Road Atlanta, GA 30329;

CENTERS FOR DISEASE CONTROL AND PREVENTION,
Centers for Disease Control and Prevention 1600 Clifton Road
Atlanta, GA 30329;

Defendants.

## CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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## INTRODUCTION

- 1. On a hot day in mid-September, Mirard Joseph crossed the Rio Grande with his wife Madeleine and their one-year-old daughter. As they stepped onto the riverbank in Del Rio, Texas, Mirard and Madeleine were greeted by countless others who, like them, had fled danger and instability in Haiti and traveled thousands of miles to the United States to save their own and their families' lives.
- 2. For days, Mirard and Madeleine waited patiently for an opportunity to seek asylum, a process they are entitled to access under U.S. law. They and at least 15,000 Haitian asylum seekers were kept in a makeshift encampment set up by U.S. Customs and Border Protection near the Del Rio International Bridge (the "CBP Encampment"). During the day, Mirard sweltered in triple-digit temperatures. At night, the family kept close as they slept on the ground, hopeful that they could soon request protection and begin new lives in the safety of the United States.
- 3. With each passing day, Mirard's situation became more dire. U.S. officials in the encampment distributed only bottled water and bread to his family, and not enough to sustain anyone. He watched as Madeleine and their daughter suffered from hunger and dehydration. On September 18, 2021, Mirard crossed to Mexico to buy the food and water that his family desperately needed, but which U.S. officers had repeatedly denied. While in Mexico, Mirard made a note to return the next day for a treat for his daughter's second birthday.
- 4. What Mirard met as he returned to Del Rio was captured in heartrending photos and video that stirred the national conscience and placed a spotlight on the treatment of Haitians in the CBP Encampment. After Mirard stepped out of the river, holding two bags of food for Madeleine and his daughter, he encountered a mounted officer. As other officers looked on—some on foot, others on horseback or in official vehicles—the mounted officer shouted at Mirard, lashed at him with split reins, grabbed his neck, and held his collar. For several minutes, the officer attempted to drag Mirard back to the river, destroying Mirard's shirt and causing his shoes to fall off in the process. The officer released Mirard only when the horse was about to trample him. Two days later, Mirard and his family were taken to a detention facility. From there, Mirard and

Madeleine were shackled, placed on a plane with their young daughter, and expelled to Haiti.

5. Mirard now reflects that when he was grabbed and dragged by the horse-mounted officer, it "was the most humiliating experience of my life. The second most humiliating moment was when they handcuffed and chained me to go back to Haiti."

\* \* \*

- 6. What happened to Mirard and many others was neither bad luck nor an isolated experience. It was the expected result of two policies applied by U.S. officials in Del Rio.
- Acting pursuant to purported public health authority under Title 42 of the U.S. Code, immigration officials detained Haitian asylum seekers for field processing in the CBP Encampment and summarily expelled them—either on flights to Haiti or by forcing them back into Mexico—from the United States. When this "Title 42 Process" was introduced by former President Donald Trump in March 2020, his own Centers for Disease Control and Prevention experts objected that there was no sound public health rationale for an order expelling asylum seekers to the countries they fled. Since President Biden's inauguration, his administration has embraced Title 42. Indeed, consistent with the United States' long history of anti-Haitian and anti-Black immigration policies, the Biden Administration has used the Title 42 Process as a cudgel to deny thousands of Haitians an opportunity to access the U.S. asylum process. After witnessing Department of Homeland Security officials' mass expulsions of asylum seekers from the CBP Encampment, a senior advisor in the Biden Administration decried the Title 42 Process as "violat[ing] our legal obligation not to expel or return [] individuals who fear persecution, death, or torture, especially [for] migrants fleeing from Haiti."
- 8. But U.S. officials' abuse of Haitians in Del Rio did not stop with the Title 42 Process. Despite President Biden's promises to restore dignity and compassion to the U.S. asylum system, senior White House and Department of Homeland Security officials developed a "Haitian Deterrence Policy" to apply the Title 42 Process in a way that subjected Haitian asylum seekers in Del Rio to deplorable conditions while in government custody, was deliberately indifferent to humanitarian concerns, and focused on expelling Haitian asylum seekers as quickly as possible.

Pursuant to this policy, U.S. officials refused to prepare sufficient infrastructure, personnel, and resources in Del Rio to provide for migrants' basic necessities. They also directed the expedited, mass expulsions of migrants to deter other Haitians from seeking asylum in the United States.

- 9. Unfortunately, Mirard is not alone in the suffering he experienced in Del Rio from the Title 42 Process and the Haitian Deterrence Policy. Thousands of other Haitian asylum seekers in the CBP Encampment were similarly impacted by U.S. officials' calculated indifference. They were denied food, water, and medical care. They were physically and verbally abused. And they were summarily expelled without an opportunity to request asylum and without consideration of the danger they would face in Haiti or Mexico.
- 10. When the world witnessed the events unfold in Del Rio, President Biden said he "takes responsibility" for the "horrible" treatment of Haitians and promised a swift investigation. In the ensuing three months, however, there has been no accountability for these acts. Instead, U.S. officials have reaffirmed their commitment to the Title 42 Process and continue to use it to expel asylum seekers to Haiti at alarming levels—at least 99 expulsion flights to Haiti carrying more than 10,000 asylum seekers have occurred since the government began to clear the CBP Encampment in September. And the Biden Administration has shown no evidence that it has abandoned its cruel Haitian Deterrence Policy.
- 11. Plaintiffs—eleven Haitian asylum seekers who were victims of U.S. officials' abusive treatment in the CBP Encampment and expelled without an opportunity to access the U.S. asylum system, and Haitian Bridge Alliance, a community-based organization that has led the legal and humanitarian response to that conduct—bring this lawsuit to ensure accountability and an end to the Biden Administration's harmful, discriminatory, and unlawful policies.

## **JURISDICTION AND VENUE**

12. This case arises under the Fifth Amendment of the U.S. Constitution; the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* ("APA"); the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* ("INA"), and its implementing regulations; the Convention Against Torture, 8 U.S.C. § 1231 note ("CAT"), *see also* Foreign Affairs Reform and Restructuring Act of

- 1998, Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-82 (1998) ("FARRA"); and the Public Health Service Act of 1944, 42 U.S.C. § 201, et seq.
- 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The United States has waived sovereign immunity with respect to the claims alleged in this case. *See* 5 U.S.C. § 702. This Court has jurisdiction to enter declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Federal Rules of Civil Procedure 57 and 65, and the Court's inherent equitable powers.
- 14. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because defendants are agencies of the United States and federal officers of the United States acting in their official capacities and are headquartered or reside in this District and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

#### **PARTIES**

#### I. Plaintiffs

- 15. Plaintiff Haitian Bridge Alliance ("Haitian Bridge") is a grassroots and community-based nonprofit organization incorporated in California. Its mission is to advocate for fair and humane immigration policies and to provide humanitarian, legal, and social services to migrants—particularly Black migrants, the Haitian community, and other vulnerable populations. Since 2015, Haitian Bridge has provided services to asylum seekers and other migrants at the border and throughout their U.S. immigration proceedings. As a Haitian-led, Haitian Creolespeaking organization, Haitian Bridge also provides social and humanitarian assistance to and advocacy alongside Black migrant communities at the border, across the United States, and in Mexico, and educates the public about anti-Black racism in the U.S. immigration system. Haitian Bridge provided aid and legal services to asylum seekers in the CBP Encampment in September 2021. Since the encampment was cleared, Haitian Bridge has continued to provide humanitarian assistance and legal services to Haitian asylum seekers expelled from Del Rio.
- 16. Plaintiffs **Mirard Joseph and Madeleine Prospere** are citizens of Haiti. They fled to Chile in 2017 because they felt unsafe in Haiti and feared they could be kidnapped every time

they left their home. Due to their lack of stability in Chile, the couple decided to travel to the United States with their one-year-old daughter to seek asylum. On or around September 11, 2021, Mirard, Madeleine, and their baby arrived in Del Rio, Texas, and were given a numbered ticket by U.S. officials. While waiting to seek asylum, they experienced extreme hunger because U.S. officials provided insufficient food to meet their basic needs. Mirard was thus forced to cross the Rio Grande into Mexico several times to buy food for his wife and their daughter. On September 18, 2021, as Mirard was returning to the CBP Encampment with food, U.S. officials on horseback chased and lashed Mirard, and tried to force him back to Mexico. Two days later, after Mirard and Madeleine had been in the CBP Encampment for approximately nine days, officials called their ticket number and transported the family to a detention center. After being detained there for several days, Mirard and Madeleine were shackled and—without being told where they were going—expelled with their young child to Haiti. They never received an opportunity to seek asylum or explain why they feared returning to Haiti. Mirard is currently in Haiti, where he remains in hiding out of fear of being attacked or kidnapped if he ventures outside. Madeleine has been forced to separate from their family to take their young daughter to Chile for medical care that was unavailable in Haiti for the illnesses she developed in the CBP Encampment. They plan to return to the United States to seek asylum.

17. Plaintiffs Mayco ("Michael") Celon and Veronique Cassonell are citizens of Haiti. Michael fled Haiti after his mother was murdered when he was fifteen years old. Because it was not safe to return to Haiti, his family remained in the Dominican Republic and Chile for over two decades. During that time he married Veronique and they had two children. After suffering discrimination in Chile and seeing multiple Haitians murdered there, Michael and Veronique traveled to the United States with their children, intending to seek asylum. In mid-September 2021,

<sup>&</sup>lt;sup>1</sup> As used in this Complaint, references to "asylum" or the "U.S. asylum process" are understood to encompass the statutory and regulatory processes by which any noncitizen may seek all relevant forms of non-refoulement relief available under U.S. immigration laws, including asylum, withholding of removal, and relief under the Convention Against Torture. *See* 8 U.S.C. §§ 1158, 1231 & note.

Michael, Veronique, and their children crossed into Del Rio and presented themselves at the CBP Encampment. They experienced terrible conditions, received very little food and water, slept on the ground, and saw officers on horseback using reins as whips against people in the river. After approximately ten days, U.S. officials sent Michael and Veronique to a detention center, where they were detained separately, each with one of their children. After approximately nine days separated in detention, Michael, Veronique, and their children were expelled in shackles to Haiti, having never been given an opportunity to seek asylum. Conditions in Haiti were so bad that the family has since returned to Chile. Although they face discrimination and threats in Chile because of their race and Haitian nationality, they are marginally safer there than in Haiti. They plan to return to the United States to seek asylum.

- 18. Plaintiff **Wilson Doe** and his wife Wideline are Haitian nationals who fled Haiti after Wideline was kidnapped and held for ransom. They eventually made their way to the United States with their two children to seek asylum. On or around September 11, 2021, Wilson, Wideline, and their children crossed the U.S.-Mexico border near Del Rio. They remained in the CBP Encampment for approximately four days hoping they would be given the opportunity to seek asylum. While in the encampment, Wilson, Wideline, and their children received only water, and no food. On or around September 14, 2021, U.S. officials removed Wilson and his family from the CBP Encampment and held them in a detention center for about four or five days, where they separated Wilson and his older child from each other and from the rest of the family. On or around September 19, 2021, U.S. officials expelled Wilson, Wideline, and their two children to Haiti, without giving them an opportunity to seek asylum. Wilson, Wideline, and their children are currently in Haiti, where they remain in constant fear that Wideline or others in their family will again be kidnapped. Wilson and Wideline plan to return to the United States with their children to seek asylum.
- 19. Plaintiff **Jacques Doe**, a citizen of Haiti, fled Haiti because a gang had targeted him for death, even following him into the countryside when he tried to escape their reach. He fled to Brazil and then made an arduous journey to the United States to seek asylum. In mid-September

2021, Jacques came to the CBP Encampment, where U.S. officials gave him a numbered ticket. Jacques understood that he would need to identify himself when officials called the number, which they did around eight days later. Instead of receiving the chance to seek asylum, Jacques was taken to two different detention centers for approximately one week, after which he was expelled Haiti. On the expulsion flight, Jacques tried to tell officials that he could not return to Haiti because he faced danger there. But the officials responded only that "there were too many Haitians in the United States" and that they had to send Jacques and others back to Haiti. Jacques is currently in hiding in Haiti, hoping the gang that previously threatened his life will not learn that he is back in the country. Jacques plans to return to the United States to seek asylum.

- 20. Plaintiffs **Esther and Emmanuel Doe** are citizens of Haiti. They fled Haiti after receiving numerous threats of violence from a gang affiliated with the majority political party. On or around September 18, 2021, Esther, Emmanuel, and their baby son arrived in Del Rio to seek asylum in the United States. In the CBP Encampment, their baby became very sick. When Esther tried to cross the river to find food for him, she was terrorized by officers on horseback. U.S. officials attempted to expel Esther and Emmanuel back to Haiti without giving them an opportunity to seek asylum. Because they were afraid of being expelled to Haiti, Esther and Emmanuel were forced to cross with their son back into Mexico. They are currently living in precarious conditions in Mexico and intend to return to the United States to seek asylum.
- 21. Plaintiffs **Samuel and Samentha Doe** are Haitian nationals who fled Haiti after Samuel was attacked by a rival political party and threatened at the school where he worked by men armed with machetes. They originally escaped to Chile but struggled to survive there, eventually deciding to seek asylum in the United States. On or around September 16, 2021, Samuel, Samentha, and their two children crossed into the United States near Del Rio, where they were given a numbered ticket and told to wait until their number was called. While in the CBP Encampment, Samuel developed stomach ulcers, their daughter became very sick, and their son contracted an eye infection and a rash after falling on the ground and injuring his eye while running away from U.S. officers on horseback. Everyone in the family went hungry because there was not

enough food in the encampment. Eventually, Samuel and Samentha decided they could not keep their children in such conditions and felt compelled to cross back into Mexico. They are currently in Mexico because they cannot return to Haiti and plan on returning to the United States to seek asylum.

22. Plaintiff **Paul Doe** is a citizen of Haiti.<sup>2</sup> A gang affiliated with the dominant political party in Haiti killed his uncle after he failed to pay back money he owed, then targeted Paul for recruitment. Paul fled because he had only two options in Haiti: join the gang or die. He first escaped to Chile and then made his way to the United States, hoping he would be granted asylum. On or around September 17, 2021, Paul arrived in Del Rio. U.S. officials gave him a numbered ticket and told him to wait until his number was called. While waiting in the CBP Encampment, Paul was provided no shelter and very little food or water. He slept on the ground in the dust and went hungry for several days. He knew he could not survive much longer without adequate food and water. Eventually, Paul saw people being taken from the encampment and heard they had been sent back to Haiti. As more and more people were taken away, he realized that he had no option but to cross back to Mexico because he was weak from lack of food and knew that if he were sent back to Haiti, he was a dead man. Paul was never given an opportunity to speak with U.S. officials to seek asylum. Paul is currently in Mexico and plans to return to the United States to seek asylum.

#### II. Defendants

23. Defendant Joseph R. Biden, Jr., is President of the United States. He is sued in his official capacity. In that capacity, President Biden is the Chair of the National Security Council ("NSC"), a forum of the President's senior advisors, and the Domestic Policy Council ("DPC"), which is tasked with driving and implementing the President's domestic policy agenda in the White House and across the Federal Government. Under President Biden's authority, the NSC and

<sup>&</sup>lt;sup>2</sup> A motion for leave of the Court for Wilson and Wideline Doe, Jacques Doe, Esther and Emmanuel Doe, Samuel and Samentha Doe, and Paul Doe to proceed under pseudonyms will be filed separately.

DPC each contributed to devising, developing, and implementing the Haitian Deterrence Policy applied to Individual Plaintiffs and others seeking asylum in Del Rio. In his official capacity, President Biden also delegated authority to the Secretary of the U.S. Department of Health and Human Services ("HHS"), the Director of the U.S. Centers for Disease Control and Prevention ("CDC"), and the Secretary of the U.S. Department of Homeland Security ("DHS") to review, determine, and implement the Title 42 Process that was used to expel Individual Plaintiffs and thousands of others from Del Rio. Pursuant to that delegation of authority and the Haitian Deterrence Policy devised by his White House senior staff, President Biden enabled DHS to prioritize the rapid expulsion of approximately 15,000 Haitian asylum seekers from Del Rio, Texas, to Haiti and Mexico without giving them access to the asylum process or screening them for a fear of return to their home country.

- 24. Defendant Alejandro N. Mayorkas is the Secretary of Homeland Security. He is sued in his official capacity. In that capacity, Secretary Mayorkas is responsible for the administration of U.S. immigration laws. *See* 8 U.S.C. § 1103. Secretary Mayorkas directs each of DHS's components, including the components responsible for the processing, apprehension, detention, and removal of noncitizens present at or between U.S. ports of entry and the components charged with implementing and applying the Title 42 Process and the Haitian Deterrence Policy to Individual Plaintiffs and others seeking asylum in Del Rio.
- 25. Defendant U.S. Department of Homeland Security is a federal cabinet-level department of the U.S. government. DHS is an "agency" within the meaning of the APA. *See* 5 U.S.C. § 551(1). It is responsible for administering U.S. immigration laws, including those relating to the processing, apprehension, detention, and removal of noncitizens present at or between U.S. ports of entry. *See* 8 U.S.C. § 1103. DHS, in coordination with HHS and CDC, is responsible for implementing the Title 42 Process. Its components include U.S. Customs and Border Protection ("CBP") and U.S. Immigration and Customs Enforcement ("ICE"), which are responsible for implementing and applying the Title 42 Process and the Haitian Deterrence Policy.
  - 26. Defendant Chris Magnus is the Commissioner for CBP. He is sued in his official

capacity. In that capacity, Mr. Magnus is a supervisory official responsible for overseeing the processing, apprehension, and detention of noncitizens arriving at or between U.S. ports of entry. Mr. Magnus is also responsible for implementing the Title 42 Process and the Haitian Deterrence Policy and for conducting expulsions of noncitizens subject to the Title 42 Process and the Haitian Deterrence Policy.

- 27. Defendant William A. Ferrara is the Executive Assistant Commissioner of CBP's Office of Field Operations ("OFO"). He is sued in his official capacity. OFO is responsible for border security, including immigration and facilitating travel through U.S. ports of entry. As Executive Assistant Commissioner, Mr. Ferrara oversees OFO personnel and the operation of 20 major field offices and 328 ports of entry along the U.S. border. He is a supervisory official responsible for implementing the Title 42 Process at U.S. ports of entry and applying the Haitian Deterrence Policy.
- 28. Defendant Raul L. Ortiz is the Chief of U.S. Border Patrol ("Border Patrol"), which is a sub-office of CBP. He is sued in his official capacity. Border Patrol is the mobile, uniformed law-enforcement arm of CBP and is the primary federal law enforcement agency responsible for border security and enforcement of U.S. immigration laws between U.S. ports of entry. As Chief of Border Patrol, Mr. Ortiz oversees all Border Patrol personnel and is a supervisory official responsible for implementing the Title 42 Process between U.S. ports of entry and applying the Haitian Deterrence Policy.
- 29. Defendant U.S. Customs and Border Protection is a sub-agency of DHS and an "agency" within the meaning of the APA. *See* 6 U.S.C. § 271; *see also* 5 U.S.C. § 551(1). It is responsible for the processing, apprehension, and detention of noncitizens present at or between U.S. ports of entry. CBP has primary responsibility for implementing the Title 42 Process and the Haitian Deterrence Policy and conducting expulsions of noncitizens subject to the Title 42 Process and the Haitian Deterrence Policy.
- 30. Defendant Tae D. Johnson is the Acting Director of ICE. He is sued in his official capacity. In that capacity, Mr. Johnson oversees all ICE personnel and is a supervisory official

responsible for overseeing immigration detention, including the detention of noncitizens subject to the Title 42 Process and the Haitian Deterrence Policy, and carrying out expulsion flights of noncitizens subject to the Title 42 Process and the Haitian Deterrence Policy.

- 31. Defendant U.S. Immigration and Customs Enforcement is a sub-agency of DHS and an "agency" within the meaning of the APA. *See* 6 U.S.C. § 271; *see also* 5 U.S.C. § 551(1). It is responsible for executing removal orders and overseeing immigration detention, including the detention of noncitizens subject to the Title 42 Process and the Haitian Deterrence Policy. It also conducts air operations to expel or remove noncitizens from the United States through its Office of Enforcement and Removal Operations. ICE is responsible for scheduling and coordinating expulsion flights of noncitizens subject to the Title 42 Process and the Haitian Deterrence Policy who cannot be expelled directly to Mexico through a U.S. port of entry.<sup>3</sup>
- 32. Defendant Xavier Becerra is the Secretary of HHS. He is sued in his official capacity. In that capacity, Secretary Becerra directs each component of HHS, including CDC.
- 33. Defendant U.S. Department of Health and Human Services is a federal cabinet-level department of the U.S. government. HHS is an "agency" within the meaning of the APA. *See* 5 U.S.C. § 551(1). It is responsible for administering health and human services aimed at promoting public health. Its components include CDC. HHS, through CDC, is responsible for issuing the public health orders and regulations underlying the Title 42 Process.
- 34. Defendant Rochelle P. Walensky, M.D., M.P.H., is the Director of CDC. She is sued in her official capacity. In that capacity, Dr. Walensky issued the public health orders underlying the Title 42 Process in this case.
- 35. Defendant Centers for Disease Control and Prevention is a sub-agency of HHS and an "agency" within the meaning of the APA. *See* 5 U.S.C. § 551(1). CDC is charged with fighting

<sup>&</sup>lt;sup>3</sup> Defendants Magnus, Ferrara, Ortiz, and CBP are referred to collectively as "CBP Defendants." Defendants Johnson and ICE are referred to collectively as "ICE Defendants." CBP Defendants, ICE Defendants, and Defendants Mayorkas and DHS are referred to collectively as "DHS Defendants."

public health threats, including communicable diseases. It is responsible for issuing the public health orders and regulations underlying the Title 42 Process.<sup>4</sup>

#### **FACTUAL ALLEGATIONS**

#### I. The United States' history of anti-Haitian immigration policies.

- 36. Anti-Black racism and white supremacy motivated the earliest U.S. immigration policies and have continued to shape immigration laws through the present.<sup>5</sup> Haitians have been one of the most common targets of the United States' racist, exclusionary policies.<sup>6</sup>
- 37. Haiti's history as an independent country begins in the early 1800s, when Black Africans liberated themselves from slavery and colonial rule. The Haitian Revolution in 1804 marked not only the end of nearly two centuries of French control, but also the creation of the first free Black nation in the Western Hemisphere, and the only one to gain independence through the uprising of enslaved people. With this revolution, Haiti abolished slavery almost sixty years before President Abraham Lincoln's Emancipation Proclamation. Today, Haiti is at least 95% Black and has one of the highest percentages of Black nationals in the Western Hemisphere. With its independence, Haiti inspired enslaved Black people across the world and offered freedom and citizenship to all Black and indigenous people of the Americas.

## A. The United States has long supported the economic and political subjugation of Haitians.

38. Following the Haitian Revolution, the United States viewed the new nation as an

<sup>&</sup>lt;sup>4</sup> Defendants Becerra, HHS, Walensky, and CDC are referred to collectively as "HHS Defendants."

<sup>&</sup>lt;sup>5</sup> See, e.g., Kat Murdza and Walter Ewing, Ph.D., The Legacy of Racism within the U.S. Border Patrol, American Immigration Council (2021), https://www.americanimmigrationcouncil.org/research/legacy-racism-within-us-border-patrol.

<sup>&</sup>lt;sup>6</sup> See, e.g., Fabiola Cineas, Why America Keeps Turning Its Back on Haitian Migrants, Vox (Sept. 24, 2021, 2:40 PM), https://www.vox.com/22689472/haitian-migrants-asylum-history-violence ("[E]very presidential administration since the 1970s has treated Haitians differently than other migrant groups, rejecting asylum claims, holding them longer in detention, and making it harder for them to settle down in safety.").

existential threat of Black uprising and liberation and did not diplomatically recognize Haiti for more than half a century. Throughout the subsequent 200 years, the United States has actively oppressed and discriminated against Haitians.

- 39. In 1825, when France demanded that Haiti pay the present-day equivalent of billions of dollars for the so-called loss of enslaved human labor, American banks lent to Haiti at usurious interest rates so the nation could avoid French reoccupation.<sup>7</sup>
- 40. In part to ensure continued payment of this debt, the United States forcibly occupied Haiti from 1915 to 1934. During that period, U.S. officials engaged in violent and deadly repression of Haitians while restructuring the nation's economy and constitution to benefit American interests. The United States ultimately withdrew, following mass, organized resistance by the Haitian people.
- 41. Following this occupation, the United States continued to promote its financial and political interests in Haiti to the detriment of the Haitian people. It supported the brutal dictatorships of Francois and Jean-Claude Duvalier, which, over a thirty-year-period, contributed to inequality, impunity, destabilization, and mass poverty in Haiti and resulted in the deaths of tens of thousands of Haitians and a diaspora of thousands of others fleeing violence.
- 42. In more recent years, the United States has intervened to prop up corrupt leaders in Haiti, further undermining the rule of law and human rights. The United States was instrumental in the election of Michel Martelly and his hand-picked successor Jovenel Moïse, despite Martelly's increasing slide toward authoritarianism and Moïse's fraudulent election and subsequent dissolution of parliament.

<sup>&</sup>lt;sup>7</sup> See Marlene Daut, France Pulled Off One of the Greatest Heists Ever. It Left Haiti Perpetually Impoverished, Miami Herald (July 15, 2021), https://www.miamiherald.com/opinion/oped/article252809873.html.

<sup>&</sup>lt;sup>8</sup> See Emmanuela Douyon and Alyssa Sepinwall, *Earthquakes and Storms Are Natural, but Haiti's Disasters Are Man-Made, Too*, Wash. Post (Aug. 20, 2021, 6:00 AM), https://www.washingtonpost.com/outlook/2021/08/20/earthquakes-storms-are-natural-haitis-disasters-are-man-made-too/.

43. In the face of this long history of political and economic instability, Haitians have remained steadfast in their struggle for autonomy against external and internal forces seeking to exploit them. It was this resolute spirit that U.S. Special Envoy to Haiti Daniel Foote referenced in his September 22, 2021 letter resigning his post in protest of the Biden Administration's actions in Del Rio that month. Citing the United States' long history of intervention and the inhumane treatment of Haitians, Ambassador Foote remarked: "[W]hat our Haitian friends really want, and need, is the opportunity to chart their own course, without international puppeteering and favored candidates."

## B. The United States uses its immigration policy to discriminate against Haitians.

- 44. As the United States was interfering with Haitian affairs and contributing to burgeoning political and economic unrest, it was also crafting immigration policies that specifically targeted Haitians for disparate treatment to keep them off U.S. soil.<sup>9</sup>
- 45. In 1978, the United States created a policy dubbed the "Haitian Program," which jailed arriving Haitians and universally denied their asylum claims despite the known atrocities being committed by the Duvalier regime at the time. <sup>10</sup>
- 46. The Haitian Program was struck down in *Haitian Refugee Center v. Civiletti*, which held the government systematically discriminated against Haitian asylum seekers. 503 F. Supp. 442, 450 (S.D. Fla. 1980) ("This case involves thousands of [B]lack Haitian nationals, the brutality of their government, and the prejudice of ours."). The United States quickly implemented a new policy requiring them to be detained without an opportunity to post bail. The policy appeared

<sup>&</sup>lt;sup>9</sup> "It is instructive to note that, despite the ideological differences between the Carter, Reagan, Bush I, Clinton, and Bush II administrations, each has persistently discriminated against Haitian entrants . . . ." Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants Since 1882*, at 213-14 (2004).

<sup>&</sup>lt;sup>10</sup> See Carl Lindskoog, Violence and Racism Against Haitian Migrants Was Never Limited to Agents on Horseback, Wash. Post (Sept. 30, 2021, 6:00 AM), https://www.washingtonpost.com/outlook/2021/10/02/violence-racism-against-haitian-migrants-was-never-limited-horseback-riders/.

neutral on its face, but statistics showed selective application to Haitians and discovery sought in a legal challenge to the policy in *Jean v. Nelson* showed that the government was using this policy to continue its "Haitian Program." 711 F.2d 1455, 1493 (11th Cir. 1983), *on reh'g*, 727 F.2d 957 (11th Cir. 1984), *aff'd*, 472 U.S. 846 (1985). U.S. officials adopted this policy to deter Haitian asylum seekers, even as the then-Deputy Attorney General acknowledged it could create an appearance of "concentration camps" filled with Black people. An Eleventh Circuit panel in *Jean v. Nelson* held that the selective application of the policy to Haitians violated equal protection, particularly in light of the government's history of discriminatory policies against Haitians. *Id.* 

- 47. During the 1980s and 1990s, the United States began an aggressive interdiction policy to intercept Haitians at sea and return them to Haiti. <sup>11</sup> The policy was designed to prevent Haitian migrants from reaching U.S. soil, where they could request access to the U.S. asylum process and to evade its non-refoulement obligations under international law not to return asylum seekers to a country in which they would be likely to face persecution. Under this policy, U.S. authorities intercepted tens of thousands of Haitian asylum seekers at sea and prevented them from seeking relief in the United States. Indeed, from 1981 to 1991, only *twenty-eight* out of over 25,000 interdicted Haitians were allowed to enter the United States.
- 48. While the Haitian interdiction policy was in place, the United States singled out Haitian migrants for detention at Guantanamo Bay. At the height of this policy, at least 12,000 Haitians were held at the U.S. military prison.
- 49. This disproportionate use of detention continues today. Not only are Black migrants in general more likely to be held in immigration detention, but Haitians are particularly targeted. In 2020, Haitians constituted the largest nationality group in family detention. While accounting for only 1 percent of asylum decisions adjudicated in 2020, Haitians represented more than 44

<sup>&</sup>lt;sup>11</sup> See Pushing Back Protection: How Offshoring and Externalization Imperil the Right to Asylum, National Immigrant Justice Center and FWD.us, 6 (2021), https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2021-09/Offshoring%20Asylum% 20Report Chapter4.pdf.

percent of all families locked in ICE detention during summer 2020. Throughout 2020, the U.S. consistently detained more Haitian families than any other nationality.

- 50. Contemporary immigration schemes have also aimed to prevent Haitian migrants from reaching the United States to seek asylum. Under a policy known as "metering," first implemented under President Barack Obama in 2016 in response to an increase in Haitian migrants seeking asylum, U.S. officials limited the number of migrants permitted to request asylum at ports of entry and turned back most asylum seekers to wait in dangerous Mexican border cities for an opportunity to request protection. The policy has since been held unlawful by a federal court, but not before it prevented thousands of Haitians from exercising their rights under U.S. law.
- 51. In January 2018, DHS announced the termination of Temporary Protected Status for Haitians, despite dire conditions in Haiti. The policy was enjoined after a district court found that the policy was likely "based on race and/or national origin/ethnicity against non-white immigrants in general and Haitians in particular." *Saget v. Trump*, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018); *Saget v. Trump*, 375 F. Supp. 3d 280, 374 (E.D.N.Y. 2019) ("Based on the facts on this record, and under the factors prescribed by *Arlington Heights*, there is both direct and circumstantial evidence a discriminatory purpose of removing non-white immigrants from the United States was a motivating factor behind the decision to terminate TPS for Haiti.").

## C. The United States' recent Title 42 Process has been brutally deployed against Haitians.

- 52. The most recent example of the United States' discriminatory immigration policies is the implementation of a purported public health order under the Public Health Service Act, 42 U.S.C. § 265.
- 53. While the use of Title 42 began under former President Trump, President Biden has continued its use—with alarming increases against Haitians. During 2018 and 2019, former Trump Administration official Stephen Miller advocated using the government's public health powers to restrict immigration and end migrants' access to asylum. This proposal followed a history of bigoted and xenophobic policies advanced by the Trump Administration to scapegoat immigrants,

particularly those from predominantly Black countries like Haiti that then-President Trump referred to as "shithole countries."

- 54. In early 2020, the Trump Administration seized upon the global COVID-19 pandemic as an opportunity to execute Miller's proposal. Despite objections from CDC public health experts that "there was no valid public health reason" for an order under Section 265, then-President Trump announced on March 20, 2020, that Defendant CDC would issue an order "to suspend the introduction of all individuals seeking to enter the U.S. without proper travel documentation" along the U.S. border. Any migrant subject to the order would be "immediately return[ed]" "without delay."
- 55. To implement this immigration authority consistent with then-President Trump's direction, Defendant CDC issued a regulation, without advance notice and comment, permitting the agency to prohibit the "introduction into the United States of persons" from foreign countries. *See* 42 C.F.R. § 71.40 (the "Title 42 Regulation").
- 56. Pursuant to this purported regulatory authority, Defendant CDC issued an order directing the "immediate suspension of the introduction of" certain noncitizens seeking entry at ports of entry or between ports of entry without proper travel documents. Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060, 17,061 (Mar. 26, 2020) (eff. date Mar. 20, 2020). Defendant CDC has since reissued similar orders, most recently in August 2021, that continue to prohibit covered noncitizens from entering the United States purportedly to "protect" the public "during the COVID-19 public health emergency." Public Health Assessment and Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 86 Fed. Reg. 42,828, 42,828 (Aug. 5, 2021). In December 2021, Defendant CDC announced that it would keep the Title 42 order in place.
- 57. Shortly after Defendant CDC's issuance of the Title 42 Regulation and the March 2020 public health order, Defendant CBP began developing standards implementing the order.

Cf. 42 C.F.R. § 71.40(d)(2). By April 2020, Defendant CBP issued an internal memorandum establishing procedures for applying Defendant CDC's order under "Operation Capio" (the "CBP Capio Memo" or the "Memo"). 12 The CBP Capio Memo provides that "all processing [of covered noncitizens] will be done in the field" "[t]o the maximum extent possible." It also directs that covered noncitizens should be "immediately returned to Mexico or Canada" at the nearest port of entry or transported to "a dedicated facility for limited holding prior to expulsion" to their home country. The CBP Capio Memo provides no process for covered noncitizens to seek access to the U.S. asylum process and indicates that U.S. immigration officials are purportedly "not operating pursuant to [their] authorities" under U.S. immigration laws when processing and summarily expelling covered noncitizens.

58. Since January 2021, DHS Defendants have increased the rate of expulsions for Haitians under the Title 42 Process. During the first weeks of the Biden Administration, DHS Defendants effectuated the expulsion of more Haitians under the Title 42 Process than during the entire prior fiscal year under the former Trump Administration. In the past eleven months, Defendant ICE has conducted nearly 130 expulsion flights to Haiti.

# II. DHS Defendants violate the rights of thousands of Haitian asylum seekers in Del Rio.

- 59. DHS Defendants' enforcement of the Title 42 Process against Haitians has always had devastating effects, but it has taken on additional dimensions since September 2021, when thousands of Haitian migrants began to arrive near the Del Rio Port of Entry in Del Rio, Texas.
- 60. President Biden, through the NSC and DPC, and DHS Defendants began receiving intelligence reports in August 2021 indicating that they could soon anticipate an increase in the number of Haitians seeking asylum in Del Rio. Since that time, their response has been to adopt a series of decisions and policies designed to suppress the growing number of Haitians arriving at the border and to deter Haitians from seeking asylum in the United States in the future

<sup>&</sup>lt;sup>12</sup> https://www.documentcloud.org/documents/6824221-COVID-19-CAPIO.html.

(collectively, the "Haitian Deterrence Policy").

- The Haitian Deterrence Policy resulted from a series of discrete decisions made by 61. President Biden's senior advisors on the NSC and DPC in September 2021, under authority delegated by President Biden. From approximately September 9 to 24, 2021, at least 15,000 Haitians were held in a makeshift CBP field encampment for field processing pursuant to the CBP Capio Memo near the Del Rio International Bridge (the "CBP Encampment"). As directed by the White House and Defendant Mayorkas pursuant to the Haitian Deterrence Policy, DHS Defendants and personnel took no steps to prepare to receive thousands of asylum seekers in Del Rio—in contrast to DHS's approach to similar circumstances involving non-Haitians. As a result, CBP officers deprived individuals in the CBP Encampment of basic human necessities like sufficient food and water, ignored their medical needs, and provided no shelter to protect them from the blazing sun, triple-digit heat, and copious dust. When asylum seekers attempted to provide for such needs themselves, they were often physically or verbally assaulted by CBP officers. Upon information and belief, after allowing Haitian asylum seekers to suffer for days, DHS officers did not screen these individuals for fear of return to their home country or process them for asylum, instead acting to expel them as quickly as possible under the Haitian Deterrence Policy, either on expulsion flights to Haiti or by forcing individuals to Mexico. In the resulting series of expulsion flights to Haiti, ICE officials expelled at least one mother with a days-old-baby born in the United States. Some expelled individuals did not even realize they had been sent to Haiti until they got off the plane, because officers had lied about where the asylum seekers were being taken. Many individuals were expelled in shackles; upon information and belief, none were given an opportunity to request asylum or screening for fear or risk of torture and death upon return to Haiti or Mexico.
- 62. This brutal and rapid expulsion of asylum seekers was intentional. Under the Haitian Deterrence Policy devised by White House senior officials, DHS Defendants applied the Title 42 Process in Del Rio in a manner indifferent to humanitarian concerns and focused on removing Haitian asylum seekers as quickly as possible to discourage other Haitians from

exercising their right to seek asylum. DHS Defendants implemented the policy while taking steps to shield their actions from accountability, including by preventing media access to the CBP Encampment, restricting the air space over the encampment, and expelling thousands of individuals before any human rights abuses could be documented, investigated, or pursued. On information and belief, the adoption and implementation of the Haitian Deterrence Policy was informed by a perception that Haitian asylum seekers are dangerous, violent and criminal; a discriminatory purpose toward Black and Haitian migrants; a desire to keep Black and Haitian migrants out of the country; and a plan to send a message to other Haitian asylum seekers not to come to the United States. For example, a senior DHS official told White House and other DHS officials, including Secretary Mayorkas, that the Haitian migrants in Del Rio were more likely to be violent—with no facts to support this statement. On information and belief, this view was adopted by the White House and DHS and resulted in their Haitian Deterrence Policy.

# A. DHS Defendants take no steps to prepare for the anticipated arrival of large groups of Haitian asylum seekers in Del Rio.

- 63. By early 2021, President Biden's staff and DHS Defendants were aware that instability and desperate conditions in Haiti had forced numerous Haitians to flee to various Latin American countries and that many Haitians were traveling toward the U.S. border to seek asylum.
- One month before thousands of Haitians arrived at the CBP Encampment, Defendant Secretary Mayorkas redesignated Haiti for Temporary Protected Status. *See* Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. 41,863, 41,863-71 (Aug. 3, 2021). In the notice, Secretary Mayorkas concluded that protected status was appropriate because of extraordinary conditions in Haiti, including "a deteriorating political crisis, violence, and a staggering increase in human rights abuses," as well as "rising food insecurity and malnutrition, [. . .] waterborne disease epidemics, and high vulnerability of natural hazards, all of which have been further exacerbated by the [COVID-19] pandemic." 86 Fed. Reg. 41,864 (citation omitted).
- 65. Meanwhile, local officials in Del Rio began alerting the Biden Administration that they expected increasing arrivals of asylum seekers and lacked the resources necessary to manage

those arrivals. As early as February 2021, Del Rio Mayor Bruno Lozano publicly warned President Biden and DHS Defendants that Del Rio needed federal support to assist with growing numbers of border crossings; at least President Biden's senior advisors on the NSC and DPC, as well as DHS Defendants, were informed of the mayor's concerns.

- 66. In April 2021, President Biden's staff and DHS Defendants received data indicating that Haitian migrants disproportionately arrived and crossed into the United States in the CBP Del Rio Sector. In the following months, they continued to receive intelligence reports that migrant border crossings, particularly of single, male Haitian asylum seekers, continued to increase and that Del Rio lacked resources to meet the needs of arriving Haitians.
- 67. President Biden and his senior staff and DHS Defendants received regular intelligence in July and August 2021 reflecting the movement of Haitians from South and Central America toward the United States. Western Hemisphere immigration experts warned the Biden Administration of the impending arrival of thousands of Haitians. This information was corroborated by internal intelligence reports and information received from Latin American and local government officials.
- 68. Despite these warnings, the White House and DHS Defendants decided to take no action to plan for the arrival of these asylum seekers. Senior White House officials dismissed reports from immigration experts and local officials and prevented staff from taking steps to prepare for thousands of arriving Haitians given the known resource shortages in Del Rio.
- 69. The Haitian Deterrence Policy grew out of and encompassed these decisions. Neither President Biden's senior staff nor DHS Defendants attempted to arrange appropriate infrastructure, personnel, and resources to support the legal processing of the anticipated Haitian asylum seekers and the provision of necessary and appropriate food, water, shelter, and medical care. Instead, as part of the Haitian Deterrence Policy, senior White House and DHS officials blocked internal efforts to prepare humanitarian infrastructure in Del Rio. President Biden's senior staff also stopped efforts to prepare public health resources, including COVID-19 testing and vaccinations, for arriving Haitians.

- 70. Moreover, while CBP Defendants had, in months prior, coordinated with local officials to create a respite center at a local Del Rio church for arriving migrants, they refused to leverage this additional resource as thousands of Haitians approached the border.
- 71. President Biden, his senior advisors, and DHS Defendants also refused to take steps to ensure appropriate infrastructure and resources to facilitate screenings for asylum or withholding of removal and protection under the INA or CAT. Senior White House and DHS officials did not make such preparations despite receiving an August 2021 memorandum from DHS's Office for Civil Rights and Civil Liberties advising against expulsions of migrants to Haiti and emphasizing a "strong risk" that such expulsions would violate DHS Defendants' non-refoulement obligations under U.S. and international law. In addition, senior White House staff and DHS Defendants declined to take any steps to arrange for CAT screenings for the Haitians approaching Del Rio, even though they had ordered and implemented the adoption of such CAT screenings for Mexicans in San Diego in July 2021.
- 72. Pursuant to the Haitian Deterrence Policy, senior White House officials and DHS Defendants blocked efforts to prepare for the arrival of thousands of Haitian asylum seekers in Del Rio, including ensuring the presence of sufficient infrastructure, personnel, and resources to meet Haitians' basic needs and provide adequate screenings for relief required by law. On information and belief, senior NSC, DPC, and DHS officials believed that refusing to make appropriate preparations for arriving asylum seekers would not only deter approaching Haitians from coming to the border to seek asylum, but also deter asylum seekers already in Del Rio from attempting to return if they were expelled.

#### B. Thousands of Haitian asylum seekers arrive in Del Rio in September 2021.

73. As President Biden, his senior staff, and DHS Defendants received reports of large groups of Haitian asylum seekers traveling to the U.S. border through the late summer, border personnel in the Del Rio Sector began to observe an increase in crossings by Haitians. Daily encounters with arriving asylum seekers grew to hundreds and eventually thousands. As the processing of migrants under the Title 42 Policy slowed, in late August 2021 CBP officials set up

a "temporary intake site" near the Del Rio International Bridge, the primary port of entry in Del Rio. The site was located under the bridge to facilitate the field processing of migrants under the CBP Capio Memo.

- 74. The intake site, however, lacked sufficient resources to meet the basic needs of the arriving Haitian asylum seekers and to provide them adequate screenings for relief under U.S. law. The under-resourced intake station reflected the White House and DHS's steadfast refusal to organize any appropriate infrastructure to address the anticipated arrival of thousands of Haitian migrants, even as Del Rio Sector personnel continued to report a lack of processing capacity.
- 75. Beginning in September 2021, thousands of people began crossing the Rio Grande near the Del Rio Port of Entry to seek relief in the United States. Most of the individuals were Haitian and had come to Del Rio to request asylum.
- 76. According to DHS Defendants, at least 15,000 individuals crossed near the Del Rio Port of Entry by mid-September 2021. Many of the asylum seekers arriving in Del Rio at this time were part of family units. Public reports estimate that approximately 40 percent of those who arrived near the Del Rio Port of Entry in September 2021 were children.
- 77. As Haitian asylum seekers entered the United States in early to mid-September, the temporary intake site under the Del Rio International Bridge turned into the CBP Encampment as U.S. officials required asylum seekers to remain at the site for longer periods of time to be processed. CBP officers adopted a ticketing system to process arriving migrants, separating them into four groups that were identifiable by a numbered, color-coded ticket: families with children, pregnant women, single men, and single women. When officers called out numbers, the corresponding ticket holders were expected to identify themselves for processing. Migrants were also directed to different sections of the CBP Encampment based on the color of their tickets.
- 78. As the number of asylum seekers in the CBP Encampment grew, CBP increased the number of personnel monitoring and patrolling the encampment to congregate and secure arriving Haitians. These personnel prohibited asylum seekers from moving freely throughout the CBP Encampment and informed Individual Plaintiffs and other asylum seekers that they were to

wait until their number was called for processing. Upon information and belief, at no point during the existence of the CBP Encampment were arriving migrants given a reasonable opportunity to present themselves to a U.S. immigration officer and request access to the asylum process. They also were not screened for a fear of return to their home country or vulnerability to persecution or torture upon return, as required under U.S. law.

# C. CBP personnel abuse Haitian asylum seekers in Del Rio pursuant to the Haitian Deterrence Policy.

- 79. The lack of amenities near the CBP Encampment meant that any food, water, shelter, and medical care provided to Haitians would need to be provided by CBP personnel. As part of their Haitian Deterrence Policy, however, DHS Defendants made decisions that deprived Haitians in the encampment of such basic human necessities despite knowing for months that thousands of Haitian asylum seekers were approaching Del Rio.
- 80. Due to the DHS Defendants' deliberate lack of preparation, there was insufficient food, water, and shelter in the CBP Encampment for the thousands of Haitians arriving there in mid-September. At the same time, CBP personnel monitoring the encampment generally prevented Individual Plaintiffs and other migrants from leaving to provide for their own needs. Plaintiff Jacques Doe, for example, was in the CBP Encampment for approximately one week and suffered from severe hunger and thirst. He never tried to leave to find food in Mexico, however, because he saw that personnel patrolling the encampment would not allow it. Defendants also blocked non-governmental and legal organizations, including Plaintiff Haitian Bridge, from entering the CBP Encampment to assist the Haitian asylum seekers or to hand out know-your-rights materials.
- 81. Plaintiff Samuel Doe reflects that "no human being should have been" in the CBP Encampment. The conditions in the encampment, however, were a direct result of decisions made pursuant to the Haitian Deterrence Policy by President Biden's closest advisors and DHS Defendants to deter other Haitian and Black migrants from seeking asylum in the United States.
- 82. For example, in a September 2021 meeting addressing how to respond to conditions at the CBP Encampment, senior DHS officials described the Haitian migrants in Del Rio as

"particularly difficult" to deal with when implying that little could be done for the asylum seekers and discussing the need for swift and universal removal of Haitians in the encampment.

- 83. In a meeting including White House senior advisors to President Biden, Secretary Mayorkas, and DHS leadership, a senior DHS official made a comment implying that the Haitian migrants had engaged in criminal conduct in Mexico, without any evidence.
- 84. A CBP official in the Del Rio Sector leadership expressed a fear that Haitian asylum seekers would "tear through the walls" if put in detention.
- 85. Additionally, in internal discussions around the time of the increase in crossings in Del Rio, top DHS officials repeatedly evinced the belief that arriving Haitian asylum seekers in the CBP Encampment were uncivilized, unclean, and like animals—reflecting language and attitudes that, upon information and belief, were not used to describe non-Black migrants arriving at the U.S. border.
- 86. The result of President Biden and DHS Defendants' Haitian Deterrence Policy was rampant abuse in the CBP Encampment. Thousands of Haitians who fled violence and persecution were met with insufficient food, water, shelter, and medical care, and physical and verbal abuse, conditions described by one Congressman as "unacceptable by any human standard." After images of a White CBP officer on horseback assaulting a Black Haitian man went viral, President Biden said he "takes responsibility" for the "horrible" treatment of Haitians in Del Rio. 13

# 1. CBP personnel deprive thousands of asylum seekers in their custody of basic human needs.

87. As asylum seekers arrived in Del Rio and were given tickets for processing, they lost the ability to provide for themselves and their families. They were forced instead to rely on the CBP personnel supervising the encampment for food, water, and shelter. As a result of the Haitian Deterrence Policy, however, President Biden and DHS Defendants decided not to prepare

<sup>&</sup>lt;sup>13</sup> Marissa Dellatto, "Biden 'Takes Responsibility' for Mishandling of Haitian Migrant Crisis," Forbes (Sept. 24, 2021, 11:21 AM), https://www.forbes.com/sites/marisadellatto/2021/09/24/biden-takes-responsibility-for-mishandling-of-haitian-migrant-crisis/?sh=5fc379fc319b.

or provide sufficient resources to meet these most basic needs until there was a serious humanitarian crisis in the encampment.

#### (a) CBP personnel provide inadequate food and water.

- 88. Consistent with the Haitian Deterrence Policy, the distribution of food and water to migrants in the CBP Encampment was woefully inadequate.
- 89. CBP personnel arranged a minimal number of service stations in the CBP Encampment to distribute food and water. Anyone wishing to receive water or food was required to wait in line, often for extended periods of time. And because CBP's service stations were set up in only one section of the CBP Encampment, not all migrants could access the stations while food and water were being distributed. Many who could not receive food or water fainted from lack of nutrition or dehydration.
- 90. Plaintiff Paul Doe and others describe receiving only one or two pieces of bread or an equivalent and one or two bottles of water each day in the CBP Encampment. Appropriate food was not available in reasonable quantities until World Central Kitchen, a non-governmental organization, was able to negotiate access to the encampment and set up operations to begin providing meals the week of September 19, 2021. But by the time World Central Kitchen had scaled its operations, DHS Defendants had already started clearing out the CBP Encampment. For much of the period between September 9 and 24, CBP personnel denied most individuals in the encampment food and water beyond some bread and water each day.
- 91. The bottles of water distributed by CBP personnel were often undrinkable when hydration was most needed. They were left on containers covered in plastic with no protection from the sun. With daily temperatures hovering near triple digits, the water in the bottles became so hot that it could not be consumed when it was handed out. Some Individual Plaintiffs and other asylum seekers in the CBP Encampment were forced to drink from the Rio Grande, which is not potable. This lack of clean drinking water caused many Haitians in Del Rio to get sick, including the common development of gastrointestinal illness, particularly among babies and children.
  - 92. CBP Defendants also failed to provide formula or age-appropriate food to migrants

with young children. Plaintiff Esther Doe repeatedly requested age-appropriate food for her one-year-old son, but was told there was only the food and water being provided to adults. When Esther pleaded for something that her baby could eat, CBP personnel refused. Esther was only able to feed her son some rice pudding, which was distributed occasionally at the CBP Encampment. Esther's baby went hungry for days because Esther could not find enough food for him.

- 93. As starving and dehydrated asylum seekers pleaded without success for additional food and water, many looked to the city across the river in Mexico, Ciudad Acuña, for the resources needed to save themselves, their family members, and other vulnerable people in the CBP Encampment. Pursuant to the Haitian Deterrence Policy, CBP personnel often blocked individuals from leaving the encampment to obtain their own food and water in Ciudad Acuña. This meant that individuals seeking to buy food in Mexico often had to cross the river outside the view of CBP personnel.
- 94. Asylum seekers wishing to cross to Mexico in search of food and water faced a variety of risks: being stopped by CBP personnel while attempting to leave the CBP Encampment, drowning in the river, and being prevented from returning to the encampment by Mexico or U.S. border officials, which could lead to separation from their families.
- 95. Despite these risks, many individuals risked the river crossing to secure basic necessities. Plaintiff Mirard left the encampment to find food for his family after he and his wife, Plaintiff Madeleine, received insufficient food and water and were denied age-appropriate food for their one-year-old daughter. Plaintiff Paul Doe also crossed to Mexico to get food for himself and others in the CBP Encampment after surviving several days on only a bottle of water and a tortilla per day. Plaintiff Esther Doe was in the CBP Encampment with her husband Plaintiff Emmanuel Doe and one-year-old son for at least two days during which CBP personnel provided no baby-appropriate food. Esther's son, in desperate need of nourishment, was sick with a fever and diarrhea. Watching her child suffer from sickness and hunger, Esther decided she had no other choice but to cross the river in search of food for her baby.
  - 96. Individuals returning to the CBP Encampment often encountered resistance from

CBP personnel. U.S. border officials, including some on horseback, regularly patrolled the riverbank and physically tried to prevent asylum seekers from crossing the river. Moreover, CBP personnel frequently confiscated and deliberately disposed of the food that starving individuals had brought from Mexico.

#### (b) CBP personnel deny asylum seekers any shelter.

- 97. Pursuant to the Haitian Deterrence Policy, CBP personnel also failed to meet the basic shelter needs of the migrants in the CBP Encampment. As Haitian asylum seekers first entered the United States and were processed into the encampment, CBP personnel refused to provide beds, cots, blankets, tents, or shelters of any kind.
- 98. With no shelter, migrants in Del Rio were left fully exposed to the elements. The CBP Encampment was extremely dusty, and the wind—as well as the arrival and departure of helicopters near the bridge—kicked up dirt that gave many individuals, including children, respiratory problems, eye infections, and rashes. Most migrants in the CBP Encampment were held adjacent to the Del Rio International Bridge rather than under it, meaning they were left with no protection from the sun as daily high temperatures reached from 90 to over 100 degrees Fahrenheit. Although some migrants were fortunate to have their own tents, others made makeshift shelters from reeds pulled from the nearby riverbank to offer shade. Plaintiff Samuel Doe recalls seeing pregnant women suffering in the heat and the dirt under the bridge because they had nowhere else to go: "I have never seen anything more horrible in my life."
- 99. Asylum seekers with their own tents became targets of CBP searches, with officers regularly opening, or demanding that individuals open, their tents, in the middle of the night. These searches were alarming and disorienting for asylum seekers.
- 100. Having been denied bedding, most individuals in the CBP Encampment were forced to sleep directly on the ground, often in the dirt or on cardboard. Plaintiffs Esther and Emmanuel Doe and their sick baby, for example, were forced to sleep in the dirt each night.

#### 2. CBP personnel refuse to provide effective medical care.

101. CBP personnel also refused to provide effective medical care to the thousands of

individuals in the CBP Encampment.

- 102. Pursuant to the Haitian Deterrence Policy, President Biden and DHS Defendants refused to take the steps needed to secure necessary resources and personnel to meet the anticipated and reasonable medical needs of migrants, including the large number of babies, children, and pregnant and otherwise vulnerable people in the CBP Encampment.
- 103. For individuals able to seek out medical attention, the care offered to sick and injured Haitians was shamefully inadequate, to the extent any was provided.
- 104. In some cases, CBP personnel flatly denied migrants' requests for medical care, telling migrants to go back to Mexico instead. Plaintiff Samuel Doe's one-year-old daughter was severely ill while held in the CBP Encampment. As his daughter experienced severe coughing, diarrhea, and vomiting, Samuel begged officers for help. Each time, CBP personnel denied Samuel's pleas, just telling him he should give his daughter water. It was only after Samuel and his family were forced to return to Mexico that his daughter was able to obtain medical treatment.
- 105. At other times, CBP personnel ignored pleas for assistance, often from pregnant people and children, only acting when the condition became an obvious medical emergency. In one situation, a pregnant Haitian asylum seeker went into labor while sitting in the dirt. CBP eventually took the woman out of the CBP Encampment, but returned her to the encampment mere hours after delivery. Plaintiff Mirard also observed a pregnant woman complain of pain. On information and belief, she went into labor in the CBP Encampment, but was not taken to another facility to deliver her child until she had suffered for hours.
- 106. Ms. Jozef, Founder and Executive Director of Plaintiff Haitian Bridge, encountered several infants who had been transported to hospitals after suffering dehydration in the CBP Encampment. One baby nearly died; he survived only after Haitian Bridge intervened and advocated for his admission to a hospital in Del Rio. The newborn's condition had grown so precarious that, after he was finally removed from the CBP Encampment, he had to be airlifted to a hospital in San Antonio where specialists were able to save his life.
  - 107. The medical care others received often had no effect. Plaintiff Esther Doe's baby

developed a fever and diarrhea while they were being held in the CBP Encampment. When Esther took him to the medical tent to seek help, the medical personnel appeared more focused on taunting her about being deported and going to jail than on treating her baby. They gave Esther some liquid medication and an ice pack, which did nothing to alleviate her baby's illness.

- 108. Similarly, Plaintiff Paul Doe suffered from bloating and diarrhea because of the inadequate food and water provided in the CBP Encampment. When Paul sought treatment, an on-site doctor provided him a single pill without explaining what the pill was. The pill did not improve Paul's symptoms, and he soon learned that others seeking medical treatment were provided the same unidentified pill, regardless of their symptoms.
- 109. Many asylum seekers were unaware that medical personnel were even available. After his baby daughter developed a severe cough and diarrhea in the CBP Encampment, Plaintiff Mirard was unaware that any medical treatment was potentially available for her, and CBP personnel in the encampment did not offer any assistance to Mirard as his daughter suffered. His daughter is still ailing from health conditions that developed during their time in Del Rio.
- 110. CBP Defendants' refusal to provide adequate medical care resulted in prolonged illness and lasting suffering for many Haitians in the CBP Encampment. Even today, months after DHS Defendants unlawfully expelled thousands of asylum seekers from the encampment, Individual Plaintiffs, their families, and others continue to experience persistent illness from their ordeal in Del Rio. On information and belief, at least one Haitian who was in the CBP Encampment died after the encampment was cleared, due in part to the poor conditions and lack of medical care.

# 3. CBP personnel physically and verbally abuse asylum seekers in Del Rio.

- 111. The Haitian Deterrence Policy did not merely result in the willful deprivation of life-sustaining necessities in the CBP Encampment. Haitian asylum seekers also found themselves to be victims of physical and verbal assaults by CBP personnel who were enabled by the policy.
- 112. CBP personnel frequently targeted migrants for abuse when they were returning to the CBP Encampment from Mexico with desperately needed food and water. One of the most well-

known examples of the Haitian Deterrence Policy occurred on or about September 18, 2021, and involved CBP personnel, supported by mounted Border Patrol officers, driving Haitian asylum seekers back into the river as they returned to the CBP Encampment.

- 113. Plaintiff Mirard was one of those asylum seekers. While crossing back to the CBP Encampment with food for his wife and their daughter, Mirard encountered a mounted officer who lashed at him with split reins and attempted to drag Mirard back to the river. All Mirard could think about through the ordeal was his duty to hold onto the food at all costs, and his need to return to the CBP Encampment so he could feed his sick and hungry baby. The officer released him only when his horse was about to trample Mirard.
- 114. Plaintiff Esther Doe was also assaulted by mounted officers after going to Mexico to get food for her sick baby. As Esther attempted to return to the CBP Encampment, she was chased back into the river by mounted officers who attempted to force her back to Mexico. As Esther pleaded in English that she was attempting to return to reach her baby in the encampment, the officers ignored her. They continued to force her deeper into the river, nearly running her down with their horses. Esther needed to get back to her husband and baby, so she tried to reach the shore in Del Rio again, slightly away from the officers on horses. When the officers turned their horses to chase other people crossing the river, she was able to pass by them and reunite with her family.
- 115. Officers did not merely target Haitians returning from Mexico with food. They also chased individuals who even gathered near the river, which was commonly used for bathing, washing clothes, and cooling off. For example, when Plaintiff Samuel Doe brought his eight-year-old son to the river to clean themselves, mounted officers appeared and began running after migrants. As his terrified son tried to run away from the horses, he fell and hurt himself.
- 116. Through this ordeal, CBP personnel spewed racist and demeaning invective at Haitian asylum seekers in the CBP Encampment. One example captured on video includes a mounted officer shouting at a group of migrants: "This is why your country's shit, because you use your women for this." The officer then reared his horse, directing it at a group of children.

- 117. CBP officers also deliberately imperiled the safety of migrants crossing in the river in an attempt to keep them from entering the CBP Encampment.
- 118. As Plaintiff Paul Doe was attempting to return to the United States with food for himself and others, an officer deliberately cut a rope that had been set up to help migrants maintain balance as they traversed the river. Paul was in the middle of the Rio Grande when the officer threw the cut rope into the water and shouted to the crossing Haitians that they could not return. As the officer cut the rope, Paul watched in terror as numerous other Haitians crossing in front of him who were deeper in the water went under the water and struggled not to drown. He also saw other migrants closer to the Del Rio side of the river, including one of Paul's friends, who were hit and shoved back into the river by CBP personnel. While the CBP personnel were busy knocking Haitians into the water, Paul walked and swam downstream to find a place to cross that was not blocked by officers.
- 119. Haitians crossing the river observed that the water level of the river would also change throughout the day. At most times, the water level was below migrants' waists, permitting individuals to safely wade across with the assistance of a guide rope. Sometimes when individuals would cross from Mexico, the water level would inexplicably rise, often to an unsafe shoulder-high level that risked causing drownings. On information and belief, authorities could and did manipulate the flow of water in the Rio Grande to prevent Haitian asylum seekers from crossing. On information and belief, at least three Black migrants believed to be Haitian asylum seekers drowned while attempting to cross the river and reach the CBP Encampment.
- 120. CBP personnel also used helicopters, motorcycles, and other official vehicles to stir up dust in areas of the CBP Encampment where Haitians were congregating and sleeping. On information and belief, this conduct created respiratory problems that persist today.
- 121. While these abuses occurred, DHS personnel deliberately restricted the press and humanitarian aid and legal service organizations from entering the CBP Encampment or documenting the conduct of DHS personnel therein. For example, when Haitian Bridge attempted to enter the CBP Encampment to provide Know Your Rights information and humanitarian

assistance, CBP officials told Haitian Bridge staff they were not permitted to enter and denied their entry. The only press DHS personnel permitted to access the encampment was Fox News. DHS personnel also restricted the air space over the CBP Encampment to prevent aircraft from taking aerial footage of the encampment. On information and belief, DHS personnel prevented press and neutral observers from entering the CBP Encampment in an attempt to conceal the concerted and deliberate misconduct that occurred pursuant to the Haitian Deterrence Policy.

# D. DHS Defendants summarily expel thousands of Haitian asylum seekers from Del Rio in unprecedented fashion.

- 122. After refusing for weeks to take action to prevent or mitigate the growing humanitarian crisis in the CBP Encampment, senior advisors in the White House and DHS Defendants suddenly switched into swift and unprecedented action in mid-September to expel thousands of Haitian asylum seekers to Haiti and Mexico. Indeed, in the final days of the CBP Encampment, DHS officials rushed to clear the camp as quickly as possible and began to force groups of people onto buses for expulsion, often by tying their hands with plastic zip ties, rather than reading their ticket numbers one by one. Many people did not want to get on the buses as they feared deportation to Haiti, but were nevertheless forced on by DHS personnel.
- 123. The move to rapidly expel Haitians from the CBP Encampment was likely prompted by a district court decision issued on September 16, 2021, which found that the Title 42 Process was likely unlawful and enjoined the process from being enforced against families with minor children, but temporarily stayed the injunction until September 30. *See Huisha-Huisha v. Mayorkas*, ---F. Supp. 3d---, 2021 WL 4206688 (D.D.C. Sept. 16, 2021), *appeal docketed*, No. 21-5200 (D.C. Cir. Sept. 17, 2021). If the preliminary injunction went into effect, it would take away DHS Defendants' authority to expel Haitian families.
- 124. On September 15, 2021—the day *before* the district court's decision—Defendant Border Patrol stated that it would take between ten and fourteen days to set up infrastructure necessary to complete the processing of the Haitian migrants in the CBP Encampment. But within days after the day the district court issued its injunction, Defendant Ortiz, Chief of the U.S. Border

Patrol, stated that the CBP Encampment would be cleared within *seven days*. On information and belief, it was around this same time that senior White House and DHS officials met and expanded the Haitian Deterrence Policy to include a rapid mass expulsion strategy, and directed DHS Defendants to expel the Haitian asylum seekers in Del Rio as quickly as possible.

- 125. The number of daily expulsion flights to Haiti rose swiftly after September 16. After a single expulsion flight on September 15, daily flights began on September 19, increasing from three flights per day on September 19 to five flights per day on September 23, and then seven flights per day on September 30. Each flight carried at least 100 people. The number of Haitian asylum seekers in the CBP Encampment dwindled as migrants were processed and sent to detention centers to be staged for expulsion flights. Other migrants, already suffering from the conditions in the CBP Encampment, learned that fellow asylum seekers were being deported to Haiti and felt compelled to flee the CBP Encampment back to Mexico to avoid being returned to Haiti.
- 126. In authorizing and carrying out expulsions pursuant to the Haitian Deterrence Policy and the Title 42 Process, President Biden and DHS Defendants ignored the high risk of unlawful refoulement that their own attorneys had warned would arise from expulsions of Haitians. Upon information and belief, President Biden or DHS Defendants did not take steps to ensure that migrants were allowed to request asylum or were screened for fear or vulnerability.
- 127. President Biden's advisors and DHS Defendants were aware that some of the asylum seekers in the CBP Encampment either were not Haitian nationals, were adult nationals of other countries, or otherwise had no ties to Haiti, such as children of Haitian nationals who had been born and grew up in countries other than Haiti. Upon information and belief, President Biden's advisors and DHS Defendants affirmatively decided not to adopt any processes or protections to ensure that such individuals were not expelled to Haiti, a country that these individuals may have never visited in their lives. This decision was consistent with the Haitian Deterrence Policy and the desire to send a message to future Haitian and Black asylum seekers that they are not welcome in the United States.

- 128. When crafting and implementing the rapid mass expulsion strategy under the Haitian Deterrence Policy, a senior CBP official also stated that personnel should prioritize expelling single Haitian men because they were likely to be dangerous and violent, despite offering no evidence for the assertion.
- 129. In mid-September, DHS personnel expelled nearly 4,000 people to Haiti, including hundreds of families with children. By the end of the month, DHS Defendants had effectuated the expulsion of thousands of asylum seekers of Haitian descent to Haiti and Mexico. ICE had chartered close to 40 expulsion flights to Haiti in one of the largest mass expulsions in recent American history, and some 8,000 Haitian asylum seekers had fled to Mexico to avoid being returned to Haiti. The expulsion flights continued after the CBP Encampment was empty: between September 19 and October 19, 2021, DHS personnel expelled approximately 10,831 migrants to Haiti, including nearly 2,500 women and 1,800 children.

### 1. DHS Defendants expel thousands of asylum seekers from Del Rio to Haiti.

- 130. As DHS Defendants began implementing their unprecedented expulsion plan, CBP officers were charged with summoning asylum seekers in the CBP Encampment at all hours of the day and night for expulsion. CBP personnel would make loud announcements on speakers throughout the CBP Encampment, broadcasting numbers on the color-coded tickets that each migrant had received after arriving in the encampment.
- 131. Individuals whose numbers were announced were placed onto buses. Once the buses were full, DHS personnel transported the asylum seekers to formal detention facilities to await expulsion.
- 132. At DHS detention facilities, guards continued to harass and abuse migrants. Some guards taunted the migrants, calling them "pigs" and saying they would "trash this place like they trashed their country." Migrants were denied adequate food, medical care and sanitation, and sleeping provisions. Plaintiff Jacques Doe, for example, was only given two small pieces of bread

and two bottles of water per day and was forced to sleep on the ground in a holding cell with approximately 30 other men before he was eventually expelled.

- 133. DHS personnel also separated some family units and prevented family members from contacting each other. For example, on or about September 14, 2021, officers took Plaintiff Wilson Doe, and his wife Wideline, and their family to a detention facility, where they remained for four or five days. Wilson and his sixteen-year-old son were separated from each other and from the rest of the family. U.S. authorities did not allow Wilson to speak to anyone. When he asked a guard what they were planning to do to the detained migrants, the guard answered that Wilson had to wait to be called upon to speak. Every time Wilson tried to see anyone in his family, the guards would yell at him and prevent him from doing so. At one point, an officer screamed at Wilson, yelling that "no one told you to come to the U.S." Wilson and his family were unable to shower, wash their faces, or brush their teeth at this facility. When Wilson asked for a painkiller for a toothache, an official laughed, responded that he, too, had a toothache, and provided no medication.
- 134. Plaintiff Michael and his family experienced similarly abusive conditions. When his family arrived, officers told Michael and others that they smelled because they were Haitian. Michael and his wife Veronique were detained separately, with each keeping one of their two children with them. When Michael requested milk for his child, he was handcuffed, told to "shut up," and separated from his child for an hour. The experience brought Michael and his family to tears. No one in Michael's family was provided an opportunity to bathe while detained.
- 135. After spending at least a few days in more formal detention settings, Haitian asylum seekers subject to expulsion were transported to airports in large groups, made to board airplanes, and returned to Haiti. Upon information and belief, they were given no opportunity to access the U.S. asylum process, request the assistance of counsel, or receive any legal information. If asylum seekers asked where they were being transported, DHS officers not only withheld information but sometimes lied, stating that they were being transferred to another detention facility and were not

going to be deported. Compounding the trauma and abuse they inflicted, DHS personnel indiscriminately handcuffed and shackled nearly all adults during the long flights to Haiti.

- 136. For example, on or about September 19, 2021, officers woke Plaintiff Wilson Doe and his family in their detention cells in the middle of the night and placed them on a bus with other migrants. When Wilson asked where they were going, officers lied and said they were transferring Wilson and his family to another "prison" in Florida. After the bus drove for approximately two hours, Wilson realized that they were arriving at an airport.
- 137. When the bus parked at the airport, none of the migrants wanted to get off the bus because it was clear they were going to board a plane. Wilson and others tried to stay on the bus, stating that they did not want to leave the United States and get on the plane without knowing where they were going. In response, officers boarded the bus and beat Wilson and several others. In front of Wideline and their children, the officers beat Wilson so savagely that they ripped his clothes off and he lost his shoes. Eventually the officers forced Wilson off the bus. Wilson saw officers strike at least four other migrants.
- 138. When Wilson got to the steps to board the plane, he said he would not board the plane without knowing where it was going. The officers beat Wilson again, and at one point, an officer placed a foot on Wilson's neck, while pinning his arms against his back. As the officer continued to apply pressure, Wilson tried to say, "I can't breathe."
- 139. After beating Wilson, officers handcuffed him. The restraints were placed so tightly that they cut into his wrists and drew blood. Officers forced Wilson on the plane. They also threatened a sobbing Wideline that they would arrest Wilson if she did not get on the plane. Wilson sat through the entire flight without a shirt or shoes. Wilson and Wideline's family, and everyone else on the plane, were expelled to Haiti.
- 140. Now in Haiti, Wilson has scars on his wrists from the handcuffs. His oldest child, who once dreamed of living in the United States and joining the U.S. Army, cries every day. His younger child keeps repeating "they hurt you, they hurt you." The entire family is devastated to be back in Haiti after all that they endured to seek asylum in the United States.

- 141. Similarly, after approximately nine days at a detention facility, Plaintiffs Michael and Veronique's names were called. Michael asked an officer if they were being sent back to Haiti. The officer replied that Michael, Veronique, and the others were being transferred to a different detention facility. U.S. officials then handcuffed the adults on waists, legs, and hands before loading them onto a bus. Seeing Michael being handcuffed made his daughter cry. The bus left the detention facility with a police escort.
- 142. On the bus, Michael again asked another officer if they were being returned to Haiti. He told the officer that sending them to Haiti would be the equivalent of a death sentence—"You might as well just kill us." The officer replied that they were not being returned to Haiti, but instead being transferred to another detention facility.
- 143. Veronique had the couple's two-year old daughter on her lap during the bus trip. At one point, their daughter fell off her lap and became stuck under the seat. Veronique was unable to pick up her child because she was handcuffed. In tears, Michael and Veronique pleaded with the officers for help, saying: "Our baby is under there, we need to get the baby out. Please help us." The officers did not respond until other migrants also began shouting that there was a baby stuck under the seat. An officer eventually released one of Veronique's hands so she was able to reach down and pull her child back into her lap.
- 144. It was not until they arrived at the airport that Michael and Veronique realized they were being expelled to Haiti. They remained handcuffed on the waist, legs, and hands during the duration of the flight to Haiti. Although Michael asked for his handcuffs to be removed so he could use the restroom, officers refused to remove them for the entire trip from the detention facility to Haiti, preventing him from using the restroom.
- 145. Michael saw a woman on the bus who had given birth to a baby a few days earlier while in the CBP Encampment. That woman was also handcuffed, and she and her newborn were expelled to Haiti on the same flight as Michael and Veronique's family.
- 146. Similarly, when Plaintiffs Mirard and Madeleine and their two-year-old daughter were expelled, all the adults on their flight were shackled at the waist and legs. Any adult who did

not have to hold a small child was also handcuffed, including Mirard. The humiliation alone caused Mirard, a proud father and man of faith, to break down in tears. At no time did Defendants inform Mirard or Madeleine that they were being returned to Haiti. Only when they landed in Port-au-Prince did Mirard realize that they were being sent back to the country that he and Madeleine had fled and his daughter had never known.

- 147. Upon information and belief, at no time during the entire expulsion process—from processing at the CBP Encampment to holding at the detention facility to being transported to the airport and expelled to Haiti—did U.S. officials ever ask if Individual Plaintiffs or any other asylum seeker had a fear of returning to Haiti or wished to seek asylum.
- 148. Officers' refusal to screen for fear or vulnerability to refoulement was not a mistake. In authorizing and enabling mass expulsions under the Haitian Deterrence Policy, President Biden and DHS Defendants understood that asylum seekers would be expelled without further access to the statutory or procedural protections required under U.S. law.
- 149. DHS Defendants' failure to abide by their statutory obligations resulted in erroneous expulsions. In at least one case, a Black migrant from Angola was expelled to Haiti on the presumption that he was Haitian, despite repeatedly explaining to officers that he was not Haitian and had never been to Haiti. On information and belief, such errors were reported to senior DHS officials and President Biden and DHS Defendants took no action to prevent similar erroneous expulsions from occurring.

## 2. DHS Defendants expel thousands of asylum seekers from Del Rio to Mexico.

150. Through their conduct taken pursuant to the Haitian Deterrence Policy, DHS Defendants also effectuated the expulsion of approximately 8,000 asylum seekers to Mexico. These asylum seekers were compelled to cross back to Mexico because despite the dangerous conditions they would face there, many believed that being summarily expelled to Haiti posed an even graver threat.

- 151. For example, Plaintiffs Samuel and Samentha Doe were unwilling to risk being sent back to Haiti because they knew if they went back, they would die there. In addition, their children were sick, their son had been injured after running away from a mounted CBP officer chasing Haitians in the river, and they were starving from lack of food. Samuel describes the CBP Encampment as "the worst thing in my life that I can describe." Because Samuel feared the family would be returned to Haiti, they took their children back to Mexico.
- 152. Similarly, after Plaintiffs Esther and Emmanuel Doe had spent about one week suffering in the CBP Encampment waiting to seek asylum, they were awoken early in the morning by U.S. officials and told to get on the "last" bus. Because they were afraid of being sent back to Haiti if they got on the bus, Esther and Emmanuel crossed into Mexico with their son. Although Esther and her family had come to the CBP Encampment to request asylum, they were never asked if they wanted to seek asylum and were not given the chance to express a fear of return to Mexico or Haiti. "They never asked me that. Even if you wanted to, they didn't give you the chance to talk to them."

### E. Asylum seekers expelled from Del Rio face danger in Haiti and Mexico.

- 153. The common consequence of Defendants' implementation of the Title 42 Process and Haitian Deterrence Policy is that thousands of Haitian asylum seekers now live under constant threat in Haiti and Mexico. The danger faced by these asylum seekers is the predictable result of deliberate choices by President Biden's senior staff and DHS Defendants to expel Individual Plaintiffs and other vulnerable individuals without first affording them any access to the U.S. asylum process or required non-refoulement screenings.
- 154. Individuals expelled to Haiti face constant threats to their safety due to that country's political instability, violent crime by gangs and cartels, and acute food insecurity. Years of devastating natural disasters have crippled critical infrastructure and local economies, while progressively brutal feuds among cartels and political factions have left the government unable to provide basic services or to prevent violence and kidnappings.

- 155. This situation has deteriorated in recent months following the assassination of President Jovenel Moïse and the 7.2 magnitude earthquake that debilitated the country's south. Aid groups in Haiti believe that the insecurity is the worst they have seen in decades. The State Department has issued a "Level 4" Travel Advisory for Haiti, advising U.S. citizens not to travel there because "kidnapping is widespread" and "violent crime, such as armed robbery and carjacking, is common." U.S. government employees are encouraged not to walk in the capital city of Port-au-Prince at any time and must receive approval to visit certain parts of the city.
- 156. Fearing the escalating violence, many expelled migrants in Haiti have gone into hiding. Plaintiff Jacques Doe is currently in hiding from the gangs that forced him to flee Haiti originally. Plaintiff Wilson Doe and Wideline likewise do not venture far beyond their front porch, fearful that Wideline or others in their family could be kidnapped again. Other individuals have no choice but to live on the street or sleep in temporary shelters. Most migrants struggle to find food, housing, and jobs in a country they had fled and no longer recognize. They spend their days trying to survive amidst rampant robberies, murders, and kidnappings.
- 157. President Biden and DHS Defendants were aware of these circumstances and the danger that awaited Individual Plaintiffs and asylum seekers in Haiti when they were expelled.
- 158. One month before thousands of Haitians arrived at the CBP Encampment, around the same time Secretary Mayorkas redesignated Haiti for TPS because of the extraordinary conditions there, DHS's civil rights office confirmed that there would be a strong risk of unlawful refoulement if DHS were to expel asylum seekers to Haiti.
- authorized and effectuated the expulsion of thousands to Haiti where there is no infrastructure in place to receive and provide resources to expelled individuals. Many individuals had not been to Haiti for years and have no network, family members, or place to call home. In fact, the head of Haiti's National Migration Office protested in mid-September that Haiti was unable to receive expelled migrants. As DHS personnel were expelling Haitians from the CBP Encampment, U.S. Special Envoy for Haiti Daniel Foote resigned, declaring that he refused "to be associated with the

United States['] inhumane, counterproductive decision to deport thousands of Haitian refugees" to Haiti. Ambassador Foote noted that the "collapsed state is unable to provide security or basic services" and "simply cannot support the forced infusion of thousands of returned migrants lacking food, shelter, and money without additional, avoidable human tragedy."

- 160. Individual Plaintiffs and other Haitian asylum seekers expelled from Del Rio to Mexico also face insecurity and experience harm. Black migrants encounter increased challenges in Mexico due to pervasive anti-Black racism from Mexican immigration authorities, the police, and the local community. For example, after fleeing to Mexico to avoid being expelled to Haiti, Plaintiff Paul Doe had difficulty finding a room to rent and still has not been able to find a job, despite making multiple applications. He has also been stopped multiple times by the police, who question him about who he is and where he is going. To avoid being targeted this way, he now remains at home as much as possible.
- 161. These migrants are regularly denied adequate medical care, housing, and employment in Mexico. Vendors frequently refuse to serve Haitians and other Black migrants food or water and Mexican police officials are known to extort these migrants, threatening to deport them to their country of persecution. Scores of Haitian migrants have been kidnapped and held for ransom as they traveled to the United States and after being expelled by U.S. officials. Because of these dangers, many migrants are in hiding in Mexico.

### III. President Biden and DHS Defendants' Haitian Deterrence Policy applied in Del Rio diverges from standard practices and is driven by discriminatory purpose.

162. The suffering and harm experienced by Individual Plaintiffs and thousands of others in the CBP Encampment and during their subsequent detention and expulsions are a direct result of President Biden and DHS Defendants' Haitian Deterrence Policy. This overarching policy, which aimed to remove Haitians from the United States and prevent others from coming to seek protection under the U.S. asylum system, resulted from a series of discrete decisions that departed from standard practices and were made by senior White House and DHS officials as the situation in the CBP Encampment evolved.

### A. The treatment of Haitian migrants in Del Rio diverged from standard practices Defendants applied to other asylum seekers.

- 163. The decision to deprive Haitian asylum seekers of necessities like food, water, shelter, and medical care departed from DHS Defendants' typical procedures for processing asylum seekers pursuant to the Title 42 Process and for providing humanitarian aid to large groups of arriving migrants in several ways.
- 164. First, the high level of involvement by top White House and agency officials in decision-making relating to the treatment of asylum seekers in Del Rio was unusual. On information and belief, senior and Cabinet-level officials do not generally take an active role deciding how aid and necessities are provided at field processing centers like the CBP Encampment.
- 165. Second, President Biden, his senior advisors in the NSC and DPC, and DHS Defendants disregarded months of intelligence indicating that thousands of Haitian asylum seekers were traveling to the U.S. border and stopped internal efforts to discuss and organize necessary infrastructure, personnel, and resources to prepare for their arrival. It is uncommon for an agency to ignore its own intelligence and the recommendations of its experts, particularly where, as here, the intelligence is corroborated by reports from sources and partners with first-hand knowledge.
- 166. Third, despite the insufficient resources available at the CBP Encampment to meet the needs of Haitian asylum seekers, DHS Defendants did not seek out assistance from non-governmental organizations ("NGOs"). In similar situations, agencies like DHS and CBP generally engage with humanitarian aid organizations when circumstances prevent the agency from meeting reasonably anticipated needs.
- 167. Fourth, Defendants diverged from their typical practice of accounting for people in CBP custody and tracking important information about them, including the existence of fear-based claims. On information and belief, DHS Defendants lacked information regarding the number of fear-based claims Haitians in the CBP Encampment had raised, did not know how many people were in their custody, and lost at least one child for hours. On information and belief, this lack of

information represented a marked departure from DHS Defendants' protocols and processing of other large groups of asylum seekers at the border.

- 168. The decision to expel Haitians in the CBP Encampment as quickly as possible was also inconsistent with DHS Defendants' standard practice in similar situations.
- 169. First, DHS Defendants departed from how they typically addressed the needs of groups of asylum seekers arriving at the border, including other large and fast-growing groups. For example, when thousands of people were severely overcrowded without food or other necessities in a temporary outdoor processing site under the Anzalduas International Bridge in Mission, Texas, in spring 2021, DHS personnel relocated individuals to other sites for processing to alleviate the humanitarian crisis near the port of entry. They also engaged local NGOs and provided greater resources to asylum seekers, including food, cots, benches, and water misters.
- 170. Second, despite being informed in advance that expulsions of Haitian asylum seekers would create a "high risk of refoulement" in violation of U.S. and international law, President Biden and DHS Defendants did not take this risk into account and failed to ensure that any non-refoulement screenings or interviews were offered to asylum seekers prior to expulsion. This lack of screenings is a departure from general practice, mandated by law, to ensure adequate safeguards against unlawful refoulement of asylum seekers.
- 171. Third, DHS Defendants expelled asylum seekers to Haiti despite knowing that there was no infrastructure set up to receive and process them. Only days after the expulsion flights began, on or about September 20, 2021, did White House officials and DHS Defendants discuss the lack of infrastructure and any steps to be taken to remedy it. These actions are inconsistent with standard procedures, which call for reception infrastructure prior to expulsions on the scale that DHS Defendants were conducting.
- 172. Fourth, DHS Defendants and personnel did not discuss or take any steps to mitigate the health risks of expulsion, including COVID-19, to vulnerable asylum seekers who were sick, tender-aged, or pregnant, even though Defendants generally consider health vulnerabilities of

migrants when making expulsion decisions under the Title 42 Process. At least one woman went into labor while on the tarmac awaiting expulsion.

America and Mexico to the Title 42 Process. This policy included screening families for vulnerability and providing family units with minor children with humanitarian exemptions to the Title 42 Process. DHS Defendants departed from this default policy specifically for Haitian families in Del Rio, expelling large numbers of families, including those with infants, and including at least one family with a days-old U.S. citizen child born in the CBP Encampment, without screening them for vulnerability or exemptions.

### B. Discriminatory intent drove the treatment of Haitian asylum seekers in Del Rio.

- 174. The Haitian Deterrence Policy also arose from discriminatory intent based on race and national origin.
- 175. At the direction of the White House and DHS Defendants, CBP personnel treated all asylum seekers in the CBP Encampment as presumed Haitian nationals, regardless of whether they were in fact Haitian. DHS personnel also initially miscounted the number of Haitians in the encampment because they assumed that non-Haitian Black asylum seekers were Haitian. On information and belief, DHS Defendants took no action to prevent errors in reporting the nationality of individuals in Del Rio.
- 176. On information and belief, DHS officials tasked with addressing the developing humanitarian crisis in Del Rio viewed Haitian and Black asylum seekers as dangerous, barbaric, and criminal. On one occasion, a CBP official in senior leadership for the Del Rio Sector remarked to DHS officials that Haitians would "tear through the walls" of a detention facility. In a meeting relating to the CBP Encampment, top DHS officials described Haitians as "particularly difficult," and a senior DHS official reported to Secretary Mayorkas, without evidence, that Haitian asylum seekers had engaged in criminal conduct in Mexico.

- 177. On information and belief, DHS Defendants believed that Haitians were more likely to break the law, be embedded with smugglers, or move through irregular channels than other groups. On September 16, 2021, when preparing the mass expulsion strategy, a senior CBP official stated that removing single Haitian men must be a priority because they were likely to be dangerous and violent. DHS personnel also refused to allow the inclusion of toothbrushes or combs in some hygiene kits that were distributed at the CBP Encampment, out of concern that the Haitian asylum seekers might use them as weapons.
- 178. On information and belief, perspectives such as these shaped the decisions that senior White House and DHS officials made in adopting and implementing the Haitian Deterrence Policy. These decisions included, among others, the decision not to prepare adequate food, water, medical care, or shelter for asylum seekers arriving in the CBP Encampment; the decision that DHS personnel effectuating the expulsions of Haitians should lie about where such Haitians were being transported; the decision that DHS personnel should shackle Haitians, including mothers with children, on expulsion flights; and the decision to expel Haitians swiftly, without access to non-refoulement screenings, in one of the largest mass expulsions in U.S. history.

### IV. Defendants' Title 42 Process applied in Del Rio is unlawful.

179. Beyond the abuses described above, the procedures ostensibly being applied to Individual Plaintiffs and Haitians in Del Rio in connection with the Haitian Deterrence Policy—the Title 42 Process—are themselves unlawful. The Title 42 Process deprives asylum seekers of their statutory and procedural protections under U.S. law despite lacking any authority to do so. Moreover, although Defendants pretextually portray the Title 42 Process as a public health measure, it instead undermines public health.

# A. The federal government's public health powers provide no support for the mass, summary expulsion of asylum seekers.

- 180. The Title 42 Process that was used to expel thousands of Haitian asylum seekers in Del Rio is grounded in the federal government's purported public health authority.
  - 181. These statutory public health powers have their origins in an 1893 statute

authorizing the Executive Branch to undertake certain acts to address the spread of contagious diseases originating outside of the United States. *See* Act of Feb. 15, 1893, ch. 114, § 7, 27 Stat. 449, 452. Now codified at 42 U.S.C. § 265, the statute authorizes the CDC Director to address "a serious danger of the introduction of" a "communicable disease" from a foreign country "into the United States" by "prohibit[ing], in whole or in part, the introduction of persons or property."

- 182. Over the 128 years that the statute and its predecessors have been in force, this provision has never been used to expel noncitizens from the United States. Indeed, despite several infectious disease outbreaks during that period, no regulation has ever before been promulgated purporting to authorize the immigration powers asserted through the Title 42 Process.
- 183. This historical context fits with the framework of the Public Health Service Act, which confirms that these public health powers do not include the broad powers claimed by Defendants. Among other reasons, the statutory language expressly provides the power to prohibit "the introduction of persons and property," but makes no reference to an authority to expel individuals under the act. That Section 265 applies to U.S. citizens and noncitizens further supports the plain language interpretation that "introduction" does not mean "expulsion." Finally, the act references Section 265 as a "quarantine" provision, and provides specific penalties for its violation, none of which include expulsion. *See* 42 U.S.C. § 271(a) (violation of Section 265 "shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both").
- 184. In short, the sole statutory authority underlying the Title 42 Process and relied on in applying the process to Individual Plaintiffs and Haitian asylum seekers in Del Rio does not authorize the expulsion of noncitizens from the United States.

# B. Defendants' Title 42 Process deprives asylum seekers of protections guaranteed under U.S. law.

185. Defendants' Title 42 Process relies not only on a novel, atextual construction of Section 265, but also on the unprecedented and extraordinary claim that Defendants may ignore clear protections for asylum seekers mandated under U.S. immigration laws.

- 186. The United States' modern asylum system has its roots in the aftermath of World War II, when U.S. lawmakers created the nation's first formal asylum protections to prevent a recurrence of the United States closing its borders to individuals seeking safety from Nazi persecution.
- 187. Currently, three primary statutory frameworks operate to protect individuals fleeing persecution and torture. Together, they provide individuals coming to the United States with a right to seek immigration relief through the specific procedures set forth in those laws.
- 188. First, the INA provides that "[a]ny [noncitizen] who is physically present in the United States or who arrives in the United States"—regardless of their place of entry, interdiction, or status—"may apply for asylum[.]" 8 U.S.C. § 1158(a)(1).
- 189. Second, the INA sets forth the duty of non-refoulement, an international law principle providing that a country may not expel or return an individual to a country where they have a well-founded fear of persecution or serious harm. Consistent with the United States' obligations under the 1951 Convention on the Rights of Refugees and the 1967 Protocol, the INA's withholding of removal provision prohibits the United States from removing any individual to a country where it is more likely than not that the individual's "life or freedom would be threatened in that country because of [their] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A).
- 190. Third, FARRA implements the United States' non-refoulement duties set forth in Article 3 of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In relevant part, FARRA prohibits the United States from expelling an individual to a country where it is more likely than not that they will be tortured. *See* 8 U.S.C. § 1231 note.
- 191. DHS Defendants and personnel have applied the Title 42 Process in a manner that violates each of these fundamental protections of the U.S. asylum system.
- 192. When applying the Title 42 Process to persons in the CBP Encampment, DHS personnel refused to allow Individual Plaintiffs and thousands of others to "apply for asylum" as

required under the INA. 8 U.S.C. § 1158(a)(1). Rather than inspect all people in the encampment to determine whether they would "indicate[] either an intention to apply for asylum . . . or a fear of persecution," 8 U.S.C. §§ 1225(a)(3), (b)(1)(A)(i)-(ii), DHS personnel actively refused to engage with Individual Plaintiffs or other asylum seekers.

- 193. DHS Defendants also effectuated the expulsion of Individual Plaintiffs and others to Mexico and Haiti without considering whether they would likely be persecuted or tortured upon their return. DHS Defendants' refusal to provide adequate safeguards against refoulement, including screenings for withholding of removal and protection under CAT, is inconsistent with their mandatory duties under the INA and FARRA.
- 194. Indeed, in a memorandum dated shortly after DHS cleared the CBP Encampment, entitled "Ending Title 42 return flights to countries of origin, particularly Haiti," senior State Department advisor Harold Koh concluded that Defendants' "current implementation of the Title 42 authority continues to violate our legal obligation not to expel or return ('refouler') individuals who fear persecution, death, or torture, especially migrants fleeing from Haiti." Koh explained that the Title 42 Process, particularly as it was applied to asylum seekers in Del Rio, was inconsistent with DHS Defendants' duties under the INA and FARRA and created "an unacceptably high risk that a great many people deserving of asylum" will be unlawfully returned to countries where they fear persecution, death, or torture.
- 195. Finally, DHS Defendants' expulsions of Haitian asylum seekers under the Title 42 Process also conflicts with the INA's provisions governing the removal of noncitizens. With few exceptions, removal proceedings before an immigration judge are the "sole and exclusive procedure" for determining whether an individual may be removed from the United States. 8 U.S.C. §§ 1229a(a)(3); 1225(b)(1). Summary expulsions under the Title 42 Process offer none of the procedural protections mandated by the INA for noncitizens who fear removal.

### C. Defendants' Title 42 Process does not advance public health.

196. Although Defendants' purported goal in implementing the Title 42 Process is to promote public health, scientific experts and legal scholars have denounced the process as

undermining public health and welfare.

- 197. Defendants' Title 42 Process has never been about public health. Instead, the government's public health powers were used to serve former President Trump's political ends of restricting immigration and circumventing critical protections for asylum seekers.
- 198. When HHS Defendants' own public health experts initially refused to sign onto the first Title 42 health order, top Trump Administration officials ordered them to fall in line. It is widely reported that former Vice President Mike Pence directed former CDC Director Dr. Robert Redfield to issue the Title 42 order and Title 42 Regulation after Redfield expressed that there was no valid public health reason to issue such an order. In her testimony to Congress shortly after Defendants' use of the Title 42 Process at the CBP Encampment, Anne Schuchat, the former Deputy Director of CDC, testified that the issuance of the first Title 42 order "wasn't based on a public health assessment at the time."
- 199. The public health justifications for the Title 42 Process are no more compelling now than they were twenty months ago. Indeed, any public health justifications are weaker now due to the wide availability in the U.S. of vaccines that are highly effective in combatting the transmission and spread of COVID-19.
- 200. Shortly after Defendants applied the Title 42 Process to thousands of Haitians in Del Rio, Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases and the Chief Medical Advisor to the President, stated that "expelling" immigrants "is not the solution to an outbreak." He affirmed: "Certainly immigrants can get infected, but they're not the driving force of this, let's face reality here." Dr. Raul Gutierrez, co-chair of the American Academy of Pediatrics' Council on Immigrant Child and Family Health, echoed this sentiment, stating: "I don't think that there's a defensible public health reason to keep Title 42 in place."
- 201. After observing the expulsion of Individual Plaintiffs and thousands of Haitians "without any assessment of their safety," hundreds of Defendant Walensky's former colleagues signed a letter to oppose Defendants' Title 42 Process, calling it "a political measure to prevent legal immigration under the rhetoric of public health."

- 202. A principal justification for Defendants' continued extension and application of the Title 42 Process is the "congregate nature" of CBP and Border Patrol stations along the U.S. border, which purportedly risks the introduction, transmission, and spread of COVID-19 from arriving migrants.
- 203. Although HHS Defendants "recognize[] the availability of testing, vaccines, and other mitigation protocols [that] can minimize risk in this area," and "anticipate[] additional lifting of restrictions" as DHS facilities employ these protocols, DHS Defendants have continued to enforce the Title 42 Process for months without taking advantage of any widely available mitigation measures. For example, the CBP Capio Memo provides no policies or procedures related to COVID-19 testing or the provision of COVID-19 vaccinations. And, although President Biden and DHS Defendants were aware for months that thousands of Haitian asylum seekers were traveling towards Del Rio, they refused to make any preparations for offering testing or vaccination to asylum seekers as they waited days or weeks in the CBP Encampment.

# V. Defendants' Title 42 Process and Haitian Deterrence Policy continue, even as tens of thousands of Haitians again head to the U.S. border.

- 204. The abuses that occurred in the CBP Encampment and in connection with the expulsion of thousands of Haitians are likely to continue under DHS Defendants' enforcement of the Title 42 Process and the Haitian Deterrence Policy.
- 205. Public reporting indicates that thousands of individuals, many of whom are Haitian, are traveling to the United States to seek asylum at this time. Each Individual Plaintiff has likewise expressed an intent to return to the United States to seek asylum.
- 206. No Defendant, however, has taken any appropriate corrective steps to ensure that the abuses and mass expulsions that happened in Del Rio are not repeated and to discontinue either the Title 42 Process or the Haitian Deterrence Policy.
- 207. In December 2021, CDC conducted its periodic reassessment of the circumstances underlying CDC's August 2021 order and announced that the Title 42 Process would remain in place for at least another sixty days. In addition, President Biden and DHS Defendants have

blocked the efforts of internal staff to engage in an after-action review of the events at the encampment and DHS Defendants' treatment of Haitian asylum seekers. On information and belief, President Biden and DHS Defendants have not taken appropriate corrective action to end the Haitian Deterrence Policy.

208. With Defendants' Title 42 Process and Haitian Deterrence Policy still in place, there are no safeguards to ensure that the abuses that occurred in Del Rio will not reoccur if and when Individual Plaintiffs and other Haitians arrive at the border to seek access to the U.S. asylum process. As the local sheriff stated shortly after the CBP Encampment was cleared, "I've never seen anything like [the Del Rio Encampment], but it's going to happen again."

### VI. Individual Plaintiffs were harmed by Defendants' policies implemented in Del Rio

- 209. Defendants' adoption and implementation of the Title 42 Process and the Haitian Deterrence Policy has caused Individual Plaintiffs and all other similarly situated individuals substantial, concrete, particularized, and irreparable injury.<sup>14</sup>
- 210. As Defendants' relevant policies are ongoing, so too is the harm these policies cause. As detailed below, Individual Plaintiffs suffer ongoing harm from their treatment at the CBP Encampment and their unlawful expulsions to Haiti or Mexico. Because Individual Plaintiffs intend to return to the United States to seek asylum and Defendants' policies are ongoing, the harms detailed herein are likely to continue and recur.

#### A. Plaintiffs Mirard Joseph and Madeleine Prospere

211. Mirard and Madeleine fled Haiti around 2017 in fear for their lives, escaping to Chile. They had a baby in Chile, but Mirard could not secure residency or work authorization there. After months of instability in Chile, the family decided to travel to the United States to seek asylum. The arduous journey to Mexico took the family almost a month with their young child.

<sup>&</sup>lt;sup>14</sup> In addition to the claims asserted in this Complaint, each Individual Plaintiff is exploring individual claims based on the Federal Tort Claims Act and reserves the right to amend this Complaint to add such claims after satisfying the necessary administrative exhaustion requirements.

While traveling, bandits robbed Mirard and Madeleine and took all their money and belongings.

- 212. On or around September 11, 2021, Mirard, Madeleine, and their young daughter finally arrived in Del Rio. U.S. officials gave Mirard a blue ticket. He understood that the blue ticket was being assigned to families and meant he should wait until his number was called.
- 213. In the CBP Encampment, the family was forced to sleep on cardboard. Temperatures soared during the day and there was no shade. As a result, Mirard was severely sunburnt and dehydrated. The encampment was so dirty and dusty that their daughter developed respiratory and gastrointestinal issues that persist to this day. Mirard never saw or was aware of a doctor in the encampment who might assist his daughter.
- 214. Mirard, Madeleine, and their daughter were given only water and bread, plus a single diaper each day. There was so little food available in the CBP Encampment that Mirard and others were forced to cross the river to Mexico to purchase food and water for their families.
- 215. On or about September 18, 2021, when crossing back from Mexico with food for his family, Mirard was assaulted by a horse-mounted officer who lashed at him with reins, attempted to drag him back into the water, and nearly trampled him. This abuse has left him traumatized.
- 216. Approximately two days after this trauma, officials transported Mirard, Madeleine, and their daughter to a detention facility. After being held there in conditions unfit for human life, U.S. immigration authorities called Mirard and his family, along with other detained Haitians, and handcuffed them and put shackles on their feet and waist. Madeleine, though shackled, was not handcuffed so that she could hold the baby. No authorities informed Mirard and Madeline where they were being taken when they were forced onto a plane and expelled to Haiti. Neither Mirard nor Madeline had ever been given an opportunity to seek asylum or otherwise explain why they feared being sent back to Haiti.
- 217. Mirard is now in hiding in Haiti. Madeleine and their daughter were forced to travel to Chile to access medical treatment for the illnesses their daughter developed in the CBP Encampment. If they had the means, they would come back to the United States "right this second"

to seek asylum. They plan to save any money they can so that they can make another journey to the U.S. border to seek asylum.

### B. Plaintiffs Mayco ("Michael") Celon and Veronique Cassonell

- 218. Michael's family fled Haiti when he was only fifteen years old after the murder of his mother and lived in the Dominican Republic and then in Chile for over two decades. During that time, Michael and Veronique married and had two children. Michael, Veronique, and their children—now ages two and eight—fled Chile after conditions became extremely difficult for Haitians, who were being targeted there for violence and discrimination.
- 219. After crossing the river in mid-September 2021 to seek asylum near Del Rio, Michael and his family experienced deplorable conditions at the CBP Encampment. U.S. officials provided very little food and water to Michael's family. Michael and Veronique often gave what little they received to their children. Michael saw fellow migrants pass out from thirst, heat, and hunger. "After days of being outside like that I realized I couldn't stay there anymore and thought about returning back to Mexico."
- 220. In the CBP Encampment, migrants were using their own clothes to shade themselves from the sun and to sleep on the ground. In the morning, officers would yell "wake up, wake up" and kick migrants to awaken them. When people complained about the sun, asked about the availability of food and water, or asked when they would be processed, officers would yell and tell them to "sit down and shut up." Michael saw U.S. officials handcuff other migrants, seemingly because they had been asking questions. He also saw mounted officers using reins as whips against people in the river. He felt like the officers did not treat the Haitians in the encampment as people.
- 221. After about three days in the CBP Encampment, Michael was given a numbered ticket. Other Haitians in the CBP Encampment had explained to Michael that he had to wait to receive a ticket, and then wait for his ticket number to be called in order to be interviewed about his case and either remain in the United States or be deported.
- 222. About a week later, Michael, Veronique, and their two children had their number called and they were taken to a detention facility. After being separated and detained for over one

week, Michael and Veronique were shackled and expelled to Haiti with their children.

- 223. After being expelled to Haiti, Michael and his wife did not have enough money to feed their family. One of their daughters became ill from drinking Haiti's contaminated water, and the family was unable to obtain medical care for her due to the country's instability. While back in Haiti, Michael expressed extreme fear for his and his family's safety. "Ever since I've been here I've been fearing for my life. I'm in hiding. I'm at risk every day."
- 224. Michael and his family have since returned to Chile, where they face discrimination and threats because of their race and Haitian nationality. They plan to seek asylum in the United States again.

### C. Plaintiff Wilson Doe

- 225. Plaintiff Wilson Doe and his wife Wideline fled Haiti in 2016 after Wideline was kidnapped and held for ransom. Wilson's family had to collect a great deal of money to secure her release, and they still do not know exactly who kidnapped her. After receiving more kidnapping threats, Wilson, Wideline, and their young son fled Haiti to seek safety in Chile.
- 226. Wilson and Wideline lived in Chile for almost five years, and their daughter was born there. As the family faced instability and Wilson and Wideline could not obtain employment documents or seek asylum, the couple decided to seek asylum in the United States.
- 227. On or about September 11, 2021, Wilson and Wideline arrived in Del Rio with their sixteen-year-old son and their four-year-old daughter. They spent around four days in the CBP Encampment. During this time, U.S. officials gave them only water, but no food. The family had nothing to eat for a full day and was eventually able to eat only after a friend gave them some money, which allowed Wilson to cross into Mexico to purchase food and water.
- 228. On or about September 14, 2021, U.S. officials took Wilson and his family to what Wilson described as a "prison," where they separated Wilson from his children and held them for what he thinks was four or five days. While in detention, Wilson was never given an opportunity to state that he had a fear of returning to Haiti. When Wilson tried to speak to a U.S. official, the official told Wilson that he had to wait to be called to speak to someone.

- 229. On or about September 19, 2021, U.S. officials woke Wilson and his family in the middle of the night and placed them on a bus with other detained migrants. When Wilson asked where they were going, U.S. officials lied and said they were transferring Wilson and his family to another "prison" in Florida. After seeing they were brought to an airport, Wilson and others tried to stay on the bus, stating that they did not want to leave the United States and get on the plane without knowing where they were going. In response, U.S. officials boarded the bus and physically beat Wilson and several others. In front of Wideline and their children, the U.S. officials beat Wilson so savagely that they ripped his clothes off and he lost his shoes. Eventually the officials forced them off the bus and beat them further on the tarmac. Wilson tried to run on the tarmac, but an officer stopped him, threw him on the ground, and placed a foot on his neck while pinning his arms against his back, temporarily cutting off Wilson's ability to breathe.
- 230. U.S. officials then handcuffed Wilson so tightly that the handcuffs cut into Wilson's wrists and drew blood. Officers forcibly placed Wilson on the plane and threatened a sobbing Wideline that they would arrest Wilson if she did not get on the plane. Wilson sat through the flight without a shirt or shoes and with the handcuffs cutting into his wrists. Wilson and Wideline's family, and everyone else on the plane, was expelled to Haiti. The entire family is traumatized.
- 231. With nowhere else to go, Wilson, Wideline, and their family are staying with a relative, never leaving the house out of fear of being attacked or kidnapped. Haitians who have recently been deported back to Haiti are often targeted by gangs because the gangs believe that such people have money. Although Wilson and his family have no financial resources, they live in constant fear that someone will learn where they are and target them. Their plan is to save money so that they can travel back to the United States to seek asylum again. "We didn't want to go back to Haiti," Wilson has said. "My wife especially didn't want to return because of what happened to her. There was nothing left in Haiti for us. There is insecurity, kidnappings, and no money. Haiti is in a very difficult situation right now and that's why I resisted getting on the plane."

#### D. Plaintiff Jacques Doe

Jacques used to be a trade student and worked in construction before he was forced to flee

Haiti in 2019. A gang threatened his life after he refused their recruitment efforts and reported them to the police. Although the police arrested several gang members based on Jacques's tip, a neighbor told the gang what Jacques had done, and the gang started threatening his life. The death threats continued even when he tried to escape by moving out of the city, into the countryside.

- 232. Fearing for his life, Jacques fled Haiti for Brazil. He then decided to seek asylum in the United States. The journey was difficult and took many days, including some days when Jacques walked up to 40 miles at a stretch.
- 233. When he finally arrived in Del Rio on or about September 17, 2021, U.S. officials gave Jacques a numbered ticket. Other asylum seekers in the CBP Encampment told him that if officials called his number, he would need to identify himself to them. Although Jacques knew that people whose numbers were called were taken to prison, he thought that in prison he would be able to ask for a lawyer and get an interview with an immigration official, who would hear why he left Haiti and decide whether he could stay in the United States. He spent approximately one week in the CBP Encampment, waiting for his number to be called. Because officers called ticket numbers at all hours of the night and day, he often stayed awake at night so that he would not miss his number being called.
- 234. While in the CBP Encampment, Jacques and other asylum seekers had no choice but to sleep on the ground. Some resorted to cleaning themselves in the river because there was no other option, but he saw people get sick from the river water. "A lot of people were sick. That's what shocked me the most." Apart from the riverbank, U.S. officials typically did not allow Jacques or others to go anywhere else. But there was not enough food in the encampment: "People were starving there." During the week Jacques spent in Del Rio, U.S. officials gave him only two small sandwiches and two bottles of water per day. The bottles of water were left out in the hot sun, so whenever he got one, the water was so hot it burned his mouth. When Jacques asked for more food, U.S. officials turned him away.

After approximately one week in the CBP Encampment, U.S. officials called Jacques's ticket number in the middle of the night. He was relieved to have his number called, because he

thought his chance to ask for asylum had finally come.

- 235. Instead, Jacques was sent to two detention facilities. U.S. officials conducted a short interview and took his biometrics, but at no point did they ask him if he was afraid to return to Haiti or if he intended to seek asylum in the United States; nor was he allowed to ask questions or say anything other than answer the officials' questions. At the second detention facility, the officials did not provide Jacques with bedding, a change of clothing, or an opportunity to shower or brush his teeth. Jacques slept on the floor with around thirty other individuals. Generally, he was given only two pieces of bread and two water bottles each day.
- 236. After Jacques had been detained for approximately four days at the second facility, U.S. officials woke him up at midnight and placed him on a bus. They refused to tell Jacques where they were being taken. When Jacques asked whether he was being taken back to Haiti, U.S. officials said no. "They lied to us." Jacques did not realize he was being expelled to Haiti until he was shackled with chains across his ankles, thighs, and hands and put on the airplane. "It was absolutely terrible; I couldn't do anything. The situation made me cry. I felt helpless." When he realized that he was being deported, Jacques tried to tell officials on the plane that he could not return to Haiti because he faced danger there. But the officials said there were too many Haitians in the United States, so he had to go back.
- 237. When Jacques landed in Haiti, he was terrified that the gang would find out he was back and carry out their death threats. He immediately went into hiding, where he has been ever since, because he does not currently have enough money to leave Haiti. As a result, even though he got sick with a bad flu he contracted after being expelled, he has not been able to get any medical treatment. Because his life is in danger, Jacques plans to travel to the United States to seek asylum again.

#### E. Plaintiffs Esther and Emmanuel Doe

238. Esther fled Haiti in 2017 due to threats to her life because of her family's political connections. After Esther's family suffered home invasions and threats of violence from a gang supporting a rival political party, Esther's father decided to send her to Chile for her own safety.

Emmanuel joined her there in 2018.

- 239. Esther and Emmanuel lived in Chile and had a baby there. They struggled to survive in Chile, where they were unable to obtain permanent residence, and also faced repeated threats and extortion from drug dealers who targeted them because they were Haitian. Esther and Emmanuel decided to seek asylum in the United States, where they hoped that they could build a new life with their child.
- 240. On or about September 18, 2021, Esther, Emmanuel, and their then-fifteen monthold son crossed the U.S. border near Del Rio. When they arrived at the CBP Encampment, a U.S. immigration official gave them a numbered ticket. They observed that U.S. officials would call out numbers, and people with those numbers on their tickets would identify themselves and be taken away from the camp. Esther and Emmanuel believed that when their number was called, they could request the opportunity to remain in the United States.
- 241. In the CBP Encampment, the family slept on the ground and their son became sick with diarrhea and fever. U.S. officials distributed almost no baby-appropriate food, and Esther's son went hungry. Despite her fear of Mexican immigration officials, Esther crossed the river alone because she was desperate to find food for her sick and hungry son.
- 242. Esther bought what she could on the Mexico side of the river and tried to hurry back to the encampment. But when she was in the middle of crossing the river, she was charged by CBP officers on horseback yelling, "Go back to Mexico!" Although she shouted in English that she had a baby who was in the CBP Encampment, they told her "no, go back to Mexico." She had to run backwards towards Mexico to avoid being trampled by the horses. It was only because the officers then turned their horses to chase other migrants in the river that Esther was able to pass by them and reunite with her family.
- 243. For several more days in the encampment, Esther, Emmanuel, and her family slept on the ground and went hungry. Her son had constant diarrhea and developed a high fever. Eventually Esther's son was so ill that she twice sought help at a medical tent where there were personnel who appeared to be doctors. Visiting the doctors was an incredibly hurtful experience

for Esther, because the medical personnel treated her baby "like he was nothing." Instead of paying attention to and treating her son, they kept taunting her by asking Esther when her number would be called so that she would be put in jail and then deported. Eventually they gave her some liquid drops and some ice gel packs for his fever, but they did not appear to help.

- 244. Esther and Emmanuel saw the numbers in the encampment dwindle as people's numbers were called and they were taken away. Finally, Esther and Emmanuel were awoken early in the morning by officials calling for people to get on the "last" bus. It was clear that officials were trying to clear the encampment. But they were afraid of being sent back to Haiti because of the threats of violence made against their family, and knew it was safer for them to cross the river back to Mexico than to get on the bus and be expelled.
- 245. Esther, Emmanuel, and their son are currently living in precarious conditions in Mexico. Emmanuel has already been attacked a knifepoint, and Esther feels very visible, and vulnerable, as a Haitian in the Mexican town where they are renting a room. They plan on waiting until conditions are safer before returning to the United States to seek asylum.

#### F. Plaintiffs Samuel and Samentha Doe

- 246. Samuel is a primary school teacher and credit union employee who fled Haiti in 2016 after being attacked by a rival political party and receiving death threats by armed men at his workplace. After seeking safety in Chile, he saved enough money for his wife Samentha and their son to join him. Samuel, Samentha, and their family struggled in Chile, where they faced discrimination. Around July 2021, Samuel, Samentha, their eight-year-old son, and their one-year-old daughter, who was born in Chile, began their journey to the United States to seek asylum.
- 247. On or about September 16, 2021, the family arrived at the CBP Encampment. U.S. officials gave Samuel a numbered ticket and told him to go with the officials when his number was called. He believed that would be his opportunity to speak with U.S. immigration officials.
- 248. While in the CBP Encampment, Samuel, and his family struggled. Because there was no shelter from the extreme sun, wind, and large amounts of dirt in the air, people had to search for branches to create shade for themselves. His family slept on the ground.

- 249. The family also suffered from the lack of food at the encampment. When Samuel and his family first arrived, there was no food available for them to eat. As U.S. officials began handing out food and water, Samuel waited in line with hundreds of others to receive a bottle of water and a piece of bread or tortilla. As he waited for food, Samuel observed that the officials distributing the food taunted the asylum seekers by throwing water bottles at them. Samuel recalls, "It was humiliating. It felt like at home how you would throw food for chickens on the floor. That's how they treated us." The food that his family received in the CBP Encampment was not enough to sustain them. "It felt like they did enough so we wouldn't die but no more than that. It felt like a nightmare."
- 250. Because of the wind and large amounts of dirt in the air, Samuel and Samentha's young daughter became very sick with diarrhea, vomiting, and coughing. She became so ill that Samuel pleaded for help from a U.S. official at the encampment. The official said they could not help them and suggested Samuel give his daughter water.
- 251. As Samuel and his family waited longer in the CBP Encampment, they began to fear what would happen when their number was called. Samuel and Samentha had heard that people who had their numbers called went to be processed by immigration officials thinking that they were going to be released, but instead were sent back to Haiti. Samuel knew that if his family was returned to Haiti, they would die there.
- 252. Samuel took their eight-year-old son to the river to clean himself. Officers on horseback showed up and chased after the migrants by the river. Terrified, Samuel's son ran from the horses, fell, and injured his eye, which then became painfully inflamed. After seeing mounted officers charge at migrants returning from Mexico with food, Samuel knew that his family had to leave the CBP Encampment as quickly as possible to protect his children.
- 253. Given how ill their children were, the lack of food in the CBP Encampment, their encounter with mounted officers, and the possibility of being expelled to danger in Haiti, Samuel and Samentha felt their only choice was to cross the river back into Mexico. At no point while they were in the CBP Encampment did Samuel or Samentha have an opportunity to tell U.S.

immigration officials that they were afraid to return to Haiti and wished to seek asylum.

254. After initially staying at a shelter in Mexico, Samuel, Samentha, and their children were expelled from the shelter. They continue to live in precarious conditions in Mexico. Samuel's son suffers from the painful eye condition he developed in the CBP Encampment. Samuel and Samentha fear that if their family returns to Haiti, they will be killed. "If we were to go back to Haiti, we are 99.9 percent dead. So there was no way I would take that risk." They hope to seek asylum in the United States and plan to return to the border when they can safely do so.

#### G. Plaintiff Paul Doe

- 255. Paul was pursuing a degree in economics in Haiti but was forced to flee the country in 2017 after a gang associated with a dominant political party threatened his life because Paul refused to work for them to pay off an uncle's debt. The gang had killed Paul's uncle when he could not repay money he owed. Opposed to the gang's activities and unwilling to engage in their violence, Paul fled Haiti to seek safety in Chile. "I had to leave Haiti because I either had to be involved with the gang, or die. Those were my only two options."
- 256. Paul traveled from Chile to the United States to seek asylum because it remains his hope that he can live without constant fear that he or his family might be attacked or killed. On or about September 17, 2021, Paul arrived at the CBP Encampment and was directed to a tent with officers who gave him a ticket with a number on it. They told him to wait under the bridge until his number was called. Other asylum seekers explained that Paul would be taken on a bus to a detention center when his number was called.
- 257. For approximately the next week, Paul waited in the CBP Encampment for his number to be called. The conditions in the encampment were some of the hardest he has ever endured. Paul was forced to sleep on the ground in the dust without even a blanket. For the first several days Paul was at the CBP Encampment, officials gave him no more than a bottle of water and a tortilla each day. Often the water was undrinkable because it had been left sitting out in the sun. Around the fifth day, the officials began giving out a portion of rice and beans with the tortilla, and sometimes a box of juice. The food, however, gave him diarrhea, and when he sought medical

treatment, a doctor only gave him a pill that had no effect. Paul soon noticed it appeared to be the same pill that the doctors gave to anyone seeking care. Although he continued to feel ill, Paul did not seek medical care because everyone was given the same pill, regardless of symptoms.

- 258. Paul eventually became so hungry that he decided to cross the river to get food in Mexico. He also hoped to get medicine for a friend's sick baby. As Paul reached the river, he observed U.S. officers beating asylum seekers returning to the CBP Encampment and pushing them back into the river. When Paul attempted to cross using a rope that had been set up to aid migrants through the river, officers deliberately cut the rope, threw it back into the river, and told Paul and others that they could not cross. Paul was forced to walk and swim downstream until he could cross safely.
- 259. Paul was never asked by U.S. immigration officials if he had a fear of return to Haiti or provided an opportunity to request asylum while in the CBP Encampment. As Paul started seeing people leave the encampment, he understood that they were being deported. A U.S. official told him that "the U.S. is not a money tree you can't just come here and get money."
- 260. Paul knew that if he were to be sent back to Haiti, the gang would kill him. He felt that he had no choice but to go back to Mexico and wait there for another opportunity to seek asylum in the United States. What troubles Paul most about his experience in the CBP Encampment is that a country he has dreamed about since he was child had humiliated him and so many others from his country, rather than providing them refuge.
- 261. In Mexico, Paul regularly encounters discrimination. It was incredibly difficult for him to find a room to rent—after being denied by approximately ten people advertising rooms for rent, he finally found someone willing to rent to him. Paul has also been unable to find work. He has applied to approximately six workplaces that advertised they were hiring, but when Paul applied, he was told they were no longer hiring. Without a job, Paul worries about how he will survive. He has been stopped by the police multiple times and questioned about who he is and where he is going. He now avoids going outside as much as possible.

# VII. Haitian Bridge is harmed by the application of the Title 42 Process and Haitian Deterrence Policy in Del Rio.

- 262. The application of the Title 42 Process and Haitian Deterrence Policy to Haitian asylum seekers in the CBP Encampment has impaired Haitian Bridge's normal programming and resulted in a diversion of organizational and programmatic resources.
- 263. The abuse of Haitians in Del Rio has put severe strain on Haitian Bridge's ability to carry out its work and mission. Haitian Bridge is one of the primary organizations at the center of the massive humanitarian and legal response to the detention, inhumane treatment, and unlawful expulsion of thousands of Haitian and other Black migrants in the CBP Encampment pursuant to the Title 42 Process and Haitian Deterrence Policy. Haitian Bridge diverted six of its nine full-time staff and one full-time contractor to respond to the crisis. A majority of these staff continue to devote significant time to issues flowing from Defendants' application of these policies in Del Rio and have not been able to resume normal work on Haitian Bridge's existing projects.
- 264. Following media reporting that thousands of Haitians were coming to Del Rio to seek immigration relief, Haitian Bridge's Executive Director Guerline Jozef arrived in Del Rio on September 18, 2021. She was the first responder to the crisis; no other humanitarian organization was present on the ground at that time.
- 265. As the first responder, and as a Haitian Creole-speaking organization with Haitian staff, Haitian Bridge was compelled to devote substantial resources to provide and coordinate assistance to the thousands of migrants in Del Rio. Haitian Bridge quickly sent staff to Del Rio. Although Defendants did not allow any of these staff to enter the CBP Encampment to directly assist asylum seekers, Haitian Bridge's staff worked quickly to organize an on-the-ground emergency response. Haitian Bridge coordinated culturally sensitive humanitarian services and transportation for individuals permitted to leave Del Rio and arranged support in Haiti to receive the thousands of asylum seekers being expelled there. It also coordinated communications inquiries with the media and received members of Congress, Haitian-American elected officials, and members of Haitian consulates seeking to protect the interests of Haitian nationals. Haitian Bridge staff organized and led advocacy efforts with the federal government in an unsuccessful

attempt to slow or stop expulsion flights and to develop a more humane response that safeguarded the rights of Haitians in the CBP Encampment and in detention facilities.

- 266. On September 24, 2021, Secretary Mayorkas announced that there were no longer any migrants in the CBP Encampment. But DHS Defendants' mass expulsion of thousands of asylum seekers did not end Haitian Bridge's response work. Even after the camp was cleared, Haitian Bridge staff continued to receive delegations of Haitians and other Black leaders in Del Rio. The numerous human rights violations that Haitian Bridge staff observed at and around the CBP Encampment, including physical assaults and the denial of basic necessities to Haitian asylum seekers, compelled Haitian Bridge staff to travel to Ciudad Acuña and elsewhere in Mexico to interview individuals and gather evidence of these human rights violations.
- 267. Haitian Bridge continues to divert resources in response to the government's abusive actions. Haitian Bridge continues to provide legal and humanitarian support to affected individuals and respond to media inquiries and speaking requests related to Del Rio.
- 268. This response effort continues to take a toll on Haitian Bridge, its staff, and their ability to advance Haitian Bridge's mission. Several Haitian Bridge staff members worked in excess of 80–100 hours a week for several weeks, and lost several nights of sleep because of additional work from the crisis in Del Rio. Many of Haitian Bridge's core projects have been delayed since the government began detaining and expelling asylum seekers from the CBP Encampment in min-September. To date, Haitian Bridge staff members responding to the abuses in Del Rio, particularly Black staff members, have suffered and continue to suffer trauma from the brutal anti-Black racist treatment and injustice they witnessed in Del Rio.
- 269. The need to respond on an emergency basis to the treatment of Haitian migrants at Del Rio has impaired Haitian Bridge's ability to keep up with existing demands for its services. For example, a key program component of Haitian Bridge's work involves assisting Haitians in the United States with their applications for Temporary Protected Status, which protects individuals from deportation and enables them to receive work authorization and permission to travel. But this work has largely stalled since September 2021. Haitian Bridge has had to postpone

several clinics and has not been able to move forward work in preparing a manual and trainings to enable lawyers and law school clinics to provide this assistance around the country. Haitian Bridge has also not been able to complete dozens of TPS applications, with serious adverse consequences for their clients, who consequently have been unable to receive work authorization.

270. The events at the CBP Encampment and aftermath also strained Haitian Bridge's legal support and case management capacity. Haitian Bridge was forced to organize a national hotline to coordinate efforts and respond to hundreds of calls from Haitian asylum seekers in detention centers across the country and who had just been released from the Del Rio Encampment. In order to scale and staff this hotline, Haitian Bridge had to stall several ongoing projects.

### **CLASS ALLEGATIONS**

- 271. Individual Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(b)(1) and (b)(2) on behalf of themselves and a class of all other persons similarly situated. The proposed class is defined as all Haitian, or presumed Haitian, individuals who (1) sought access to the U.S. asylum process<sup>15</sup> in or around the CBP Encampment near the Del Rio Port of Entry between September 9 and 24, 2021, and (2) were denied access to the U.S. asylum process.
  - 272. Individual Plaintiffs seek to represent the class for all claims.
  - 273. This action meets all Rule 23(a) prerequisites for maintaining a class action.
- 274. The class is so numerous that joinder of all members is impracticable. *See* Fed. R. Civ. P. 23(a)(1). Between approximately September 9 to 24, 2021, at least 15,000 migrants, the vast majority of whom were Haitian or Black and seeking asylum in the United States, arrived at the U.S. border and were detained in the CBP Encampment near the Del Rio Port of Entry. DHS Defendants used the Title 42 Process to expel at least 10,000 asylum seekers in the encampment

<sup>&</sup>lt;sup>15</sup> As used in the proposed class definition, "asylum" and "asylum process" are understood to encompass the statutory and regulatory processes by which any noncitizen may seek all relevant forms of non-refoulement relief available under U.S. immigration laws, including asylum, withholding of removal, and relief under the Convention Against Torture. *See* 8 U.S.C. §§ 1158, 1231, 1231 note.

to Haiti or Mexico. Each of these individuals was deprived of access to the U.S. asylum process by Defendants' Title 42 Process and the Haitian Deterrence Policy. Joinder is made further impracticable because class members expelled to Haiti or Mexico generally do not have stable living conditions.

275. There are questions of law and fact that are common to the class. *See* Fed. R. Civ. P. 23(a)(2). Class members allege common harms resulting from adoption and application of Defendants' Title 42 Process and the Haitian Deterrence Policy: all class members were seeking access to the U.S. asylum process, processed in the field pursuant to the CBP Capio Memo, deprived of basic necessities in the CBP Encampment, expelled to Haiti or Mexico, and denied legal rights, including their right to access the U.S. asylum process.

All class members assert the same legal claims. These claims raise numerous questions of fact and law common to all class members, including: whether Defendants are engaged in the conduct alleged herein; whether class members are treated differently from similarly situated asylum seekers based on class members' race or nationality in violation of the Fifth Amendment; whether the application of the Title 42 Process and Haitian Deterrence Policy to class members is motivated by discriminatory intent on the basis of race or national origin, in violation of the Fifth Amendment; whether class members are deprived of their substantive and procedural due process rights under the Fifth Amendment by Defendants' Title 42 Process and Haitian Deterrence Policy; whether Defendants fail to consider important issues, including the right to non-refoulement and the danger to human life and welfare resulting from field processing asylum seekers, when issuing and implementing the Title 42 Process and Haitian Deterrence Policy; whether Defendants fail to consider important issues or consider improper factors when applying the Title 42 Process and Haitian Deterrence Policy to class members; whether 42 U.S.C. § 265 authorizes the summary expulsion of asylum seekers; whether the Title 42 Process applied to class members conflicts with the INA; whether the Title 42 Process applied to class members conflicts with FARRA; whether the summary expulsion of class members pursuant to the Title 42 Process violates the United States' non-refoulement obligations under the INA; whether class

members suffer harm as a result of Defendants' conduct; and whether class members are entitled to equitable and declaratory relief. These shared common facts will ensure that judicial findings regarding the legality of the challenged practices will be the same for all class members.

277. Individual Plaintiffs' claims are typical of the class's claims. *See* Fed. R. Civ. P. 23(a)(3). Individual Plaintiffs and class members raise common legal claims and are united in their interest and injury. All Individual Plaintiffs, like class members, are Haitians who crossed the U.S. border at Del Rio to seek asylum and were deprived of access to the U.S. asylum process by Defendants' actions. Like class members, Individual Plaintiffs were subjected to Defendants' Title 42 Process and the Haitian Deterrence Policy: they were processed in the field pursuant to the CBP Capio Memo, subjected to dire conditions and abuse in the CBP Encampment, and expelled to Haiti or Mexico without the opportunity to apply for asylum.

278. Individual Plaintiffs are also adequate representatives of the class. *See* Fed. R. Civ. P. 23(a)(4). Individual Plaintiffs and all class members share a common interest in ensuring that they are permitted to seek asylum under U.S. immigration laws without having their constitutional or statutory rights violated by Defendants. Individual Plaintiffs also seek the same relief as the members of the class they represent. Individual Plaintiffs and class members seek, among other things, an order: (1) declaring that the application of Defendants' Title 42 Process and Haitian Deterrence Policy to detain, process, and expel class members is unlawful and violates class members' constitutional and statutory rights, (2) enjoining the continued application of these policies to class members, and (3) enjoining Defendants to return unlawfully expelled class members to the United States so they can meaningfully access the U.S. asylum process. Individual Plaintiffs have no interest that is now or may be antagonistic to the interests of the class and they will fairly and adequately protect the interests of class members as they defend their own rights.

279. Individual Plaintiffs are represented by attorneys from Justice Action Center, Innovation Law Lab, and Haitian Bridge Alliance. Counsel have demonstrated a commitment to protecting the rights and interests of noncitizens and, together, have considerable experience representing immigrants in complex and class action litigation in federal court aimed at systemic

government misconduct.

- 280. The class likewise meets the requirements to be certified under Rule 23(b).
- 281. The class may be certified under Rule 23(b)(1) because prosecution of separate actions by individual class members would create the risk of inconsistent or varying adjudications and would create incompatible standards of conduct for Defendants.
- 282. The class may also be certified under Rule 23(b)(2). Defendants have acted, have threatened to act, and will act on grounds generally applicable to the class by subjecting them to the unlawful application of the Title 42 Process and the Haitian Deterrence Policy, including field processing under the CBP Capio Memo, expulsion to Haiti and Mexico, and obstruction of access to the U.S. asylum process. Given Defendants' common treatment of class members, final injunctive and declaratory relief is appropriate as to the class as a whole.

### **CAUSES OF ACTION**

#### FIRST CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment (Equal Protection)

All Plaintiffs Against President Biden and DHS Defendants

- 283. Plaintiffs reallege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
- 284. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from denying to any person equal protection of the laws. U.S. Const. Amend. V.
- 285. The Due Process Clause applies to all "persons" on United States soil and thus applied to Individual Plaintiffs and similarly situated individuals during the period they were subjected to the Title 42 Process in the United States, including field processing pursuant to the CBP Capio Memo, as well as Defendants' Haitian Deterrence Policy.
- 286. Defendants' Title 42 Process and Haitian Deterrence Policy were implemented against Individual Plaintiffs and similarly situated individuals without regard for their health, welfare, humanitarian needs, or statutory rights. The implementation of these policies resulted in

their deprivation of basic necessities such as food, water, shelter, and medical care; the imposition of physical and psychological abuse; and the use of threats, violence, and racial slurs.

- 287. The adoption and implementation of the Title 42 Process and Haitian Deterrence Policy against Individual Plaintiffs and similarly situated individuals by President Biden, his staff, DHS Defendants, and DHS personnel departed from standard procedures and was motivated at least in part by discriminatory purpose based on race and presumed national origin.
- 288. Discrimination on the basis of race or presumed national origin in the treatment of migrants in the United States is not necessary to fulfill a compelling government interest.
- 289. There is a substantial risk that Individual Plaintiffs will again be subject to discriminatory treatment based on race and presumed national origin as a result of President Biden and DHS Defendants' adoption and implementation of the Title 42 Process and Haitian Deterrence Policy.
- 290. Defendants' conduct has impaired Haitian Bridge's programming and forced Haitian Bridge to divert resources to assist the thousands of Haitian asylum seekers harmed by Defendants' conduct.
  - 291. Defendants' violations of the Due Process Clause cause ongoing harm to Plaintiffs.

### SECOND CLAIM FOR RELIEF

# Violation of the Due Process Clause of the Fifth Amendment (Substantive Due Process) All Plaintiffs Against President Biden and DHS Defendants

- 292. Plaintiffs reallege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
- 293. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty. *See* U.S. Const. Amend. V.
- 294. The Due Process Clause applies to all "persons" on United States soil and thus applied to Individual Plaintiffs during the period in which they were subject to the Title 42 Process in the United States, including field processing pursuant to the CBP Capio Memo, as well as

Defendants' Haitian Deterrence Policy.

- 295. The conduct of President Biden, his staff, DHS Defendants, and DHS personnel staff in adopting and enforcing the Haitian Deterrence Policy against Individual Plaintiffs, including enforcing the Title 42 Process in Del Rio in a manner indifferent to humanitarian concerns, expelling thousands of Haitian asylum seekers as quickly as possible, and taking steps to shield such actions from accountability, was gravely unfair and so egregious and outrageous that it may fairly be said to shock the conscience.
- 296. DHS Defendants and President Biden therefore have violated Individual Plaintiffs' substantive due process rights.
- 297. There is a substantial risk that Individual Plaintiffs and similarly situated individuals will again be subject to abusive and unconscionable treatment enabled by DHS Defendants and President Biden, including in connection with Defendants' ongoing Title 42 Process and Haitian Deterrence Policy.
- 298. Defendants' conduct has impaired Haitian Bridge's programming and forced Haitian Bridge to divert resources to assist the thousands of Haitian asylum seekers harmed by Defendants' conduct.
  - 299. Defendants' violations of the Due Process Clause cause ongoing harm to Plaintiffs.

### THIRD CLAIM FOR RELIEF

# Violation of the Due Process Clause of the Fifth Amendment (Special Relationship) All Plaintiffs Against DHS Defendants

- 300. Plaintiffs reallege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
- 301. Under the Fifth Amendment to the U.S. Constitution, Defendants have an affirmative duty to provide for an individual's basic human needs when they "take[] that person into [their] custody and hold[] him there against his will," thereby creating a "special relationship" with that individual. *DeShaney v. Winnebago Cnty. Svcs.*, 489 U.S. 189, 199-200 (1989). When

the government "so restrains an individual's liberty that it renders him unable to care for himself," it assumes responsibility for that individual's safety and well-being. *Id*.

- 302. When the government has a special relationship with an individual, "'governmental "deliberate indifference" will shock the conscience sufficiently to establish a substantive due process violation." *Harvey v. D.C.*, 798 F.3d 1042, 1050 (D.C. Cir. 2015).
- 303. Through their processing of Individual Plaintiffs at the CBP Encampment pursuant to the CBP Capio Memo and the Haitian Deterrence Policy, DHS Defendants and DHS personnel created a "special relationship" with Individual Plaintiffs by restraining their liberty, keeping them in DHS Defendants' custody, and rendering them unable to care for themselves. DHS Defendants therefore owed Individual Plaintiffs a heightened duty of care and protection.
- 304. By depriving Individual Plaintiffs in their custody of basic human needs such as adequate food, water, shelter, and medical care, as well as of the ability to act on their own behalf to meet these needs themselves, DHS Defendants and DHS personnel have acted with deliberate indifference to Plaintiffs' basic human needs and engaged in "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998). The conditions in the CBP Encampment were not reasonably related to a legitimate goal and therefore unconstitutional.
- 305. DHS Defendants therefore have violated Individual Plaintiffs' substantive due process rights.
- 306. There is a substantial risk that Individual Plaintiffs will again be subject to abusive and unconscionable treatment in DHS Defendants' custody, including in connection with DHS Defendants' ongoing enforcement of the Title 42 Process and Haitian Deterrence Policy.
- 307. DHS Defendants' conduct has impaired Haitian Bridge's programming and forced Haitian Bridge to divert resources away from its programs to assist the thousands of Haitian asylum seekers harmed by Defendants' conduct.
  - 308. DHS Defendants' violations of the Due Process Clause cause ongoing harm to

Plaintiffs.

#### FOURTH CLAIM FOR RELIEF

# Violation of the Due Process Clause of the Fifth Amendment (Procedural Due Process) All Plaintiffs Against All Defendants

- 309. Plaintiffs reallege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
- 310. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.
- 311. Congress has guaranteed asylum seekers, including Individual Plaintiffs, a protected interest in applying for asylum, withholding of removal, and relief under the Convention Against Torture, and in not being removed to countries where they face danger, persecution, and potential loss of life. *See* 8 U.S.C. §§ 1158, 1231.
- 312. Individual Plaintiffs are thus entitled under the Due Process Clause of the Fifth Amendment to a meaningful opportunity to establish their potential eligibility for asylum and access other forms of relief from removal.
- 313. By denying Individual Plaintiffs access to the asylum process and access to other relief from removal, Defendants' conduct violates procedural due process.
- 314. Further, Defendants have adopted and implemented the Title 42 Process and Haitian Deterrence Policy without adequate safeguards against expulsions of asylum seekers to countries where it is more likely than not that the asylum seeker will face persecution.
- 315. As a result of Defendants' conduct, Individual Plaintiffs have been harmed by the denial of their access to the asylum process. Individual Plaintiffs have also been harmed by being expelled to Haiti or Mexico where they face danger.
- 316. Defendants' conduct has impaired Haitian Bridge's programming and forced Haitian Bridge to divert resources away from its programs to assist the thousands of Haitian asylum seekers harmed by Defendants' conduct.

317. Defendants' violations of the Due Process Clause cause ongoing harm to Plaintiffs.

#### FIFTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act 5 U.S.C. § 706(2) Not in Accordance with Law and in Excess of Statutory Authority 42 U.S.C. § 265, 8 U.S.C. § 1158, 1231 (Title 42 Process)

All Plaintiffs Against All Defendants Other Than President Biden

- 318. Plaintiffs reallege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
- 319. Under the APA, a court "shall . . . hold unlawful and set aside agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).
- 320. The Title 42 Process must be set aside because Defendants' issuance, administration, and application of the Title 42 Process is "not in accordance with law," "contrary to constitutional right," "in excess of statutory . . . authority," and "without observance of procedure required by law" in at least the following ways:

### Contrary to the Public Health Service Act, 42 U.S.C. § 265.

- 321. Defendants have relied on Title 42 of the U.S. Code, specifically Section 265, for the purported authority to issue, administer, and apply the public health orders, regulations, and memoranda underlying the Title 42 Process.
- 322. Title 42 of the U.S. Code and Section 265 are public health statutes and do not authorize Defendants to deny asylum seekers an opportunity to access statutory and procedural protections afforded under U.S. law, including the INA. *See* 8 U.S.C. §§ 1158, 1231.
- 323. Title 42 of the U.S. Code and Section 265 likewise do not authorize Defendants to expel asylum seekers from the United States or to deny asylum seekers an opportunity to access statutory and procedural protections to non-refoulement under U.S. law, including the INA.
- 324. Defendants have applied the Title 42 Process to expel Haitian asylum seekers in Del Rio, including Individual Plaintiffs, from the United States without affording them an

opportunity to access statutory and procedural protections under U.S. law.

### Contrary to the Immigration and Nationality Act, 8 U.S.C. § 1158 (Asylum).

- 325. The INA provides that any noncitizen "who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...), irrespective of such [noncitizen's] status, may apply for asylum..." 8 U.S.C. § 1158(a)(1).
- 326. Defendants have applied the Title 42 Process to prevent Haitian asylum seekers in Del Rio, including Individual Plaintiffs, from applying for asylum or otherwise accessing the statutory and procedural protections for asylum seekers under the INA and applicable U.S. law.

### Contrary to the Immigration and Nationality Act, 8 U.S.C. § 1231 (Withholding of Removal).

- 327. The international law principle of non-refoulement provides that a country has an obligation to not expel or return an individual to a country where they have a well-founded fear of persecution or serious harm.
- 328. The INA's withholding of removal provision codifies the United States' duty of non-refoulement. Under the INA, the United States may not remove an individual to a country where it is more likely than not that the individual's "life or freedom would be threatened in that country because of [their] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A).
- 329. Defendants have applied the Title 42 Process to prevent Haitian asylum seekers in Del Rio, including Individual Plaintiffs, from accessing their substantive rights and any process for requesting withholding of removal under the INA and applicable U.S. law, and to expel Individual Plaintiffs without access to this mandatory safeguard. Further, Defendants have adopted and implemented the Title 42 Process without adequate safeguards against expulsions of asylum seekers to countries where it is more likely than not that they will face persecution.

# Contrary to the Foreign Affairs Reform and Restructuring Act of 1998, 8 U.S.C. § 1231 Note (Convention Against Torture).

330. The Foreign Affairs Reform and Restructuring Act of 1998 implements the United States' non-refoulement duties set forth in Article 3 of the Convention Against Torture. In relevant

part, FARRA prohibits the United States from expelling an individual to a country where it is more likely than not that they will be in danger of being tortured. *See* 8 U.S.C. § 1231 note.

331. Defendants have applied the Title 42 Process to prevent Haitian asylum seekers in Del Rio, including Individual Plaintiffs, from meaningfully accessing withholding of removal under FARRA. Further, Defendants have adopted and implemented the Title 42 Process without adequate safeguards against expulsions of asylum seekers to countries where it is more likely than not that the asylum seeker will face torture. Defendants have applied the Title 42 Process to expel asylum seekers, including Individual Plaintiffs, without access to this mandatory safeguard.

Ultra Vires and Contrary to the Immigration and Nationality Act, 8 U.S.C. §§ 1225, 1229a (Removal of Noncitizens).

- 332. Congress created the exclusive means for removing a noncitizen from the United States in the INA.
- 333. As a general matter, removal proceedings before an immigration judge are the "sole and exclusive procedure" for determining whether an individual may be removed from the United States. 8 U.S.C. §§ 1229a(a)(3). These proceedings include mandatory safeguards for noncitizens who fear removal. *Id*.
- 334. Defendants have implemented the Title 42 Process as a means of removing noncitizens that is not set forth in or subject to the INA. Defendants purport to apply the Title 42 Process outside of U.S. immigration laws and the sole Congressionally authorized procedures for removal set forth in the INA.
- 335. Defendants have applied the Title 42 Process to expel Haitian asylum seekers in Del Rio, including Individual Plaintiffs, from the United States without allowing them to access the statutory and procedural protections relating to the removal of noncitizens under the INA and applicable U.S. law.

\* \* \*

336. For each of these reasons, Defendants' application of the Title 42 Process to Individual Plaintiffs is *ultra vires* and contrary to law.

- 337. Defendants' issuance, administration, and application of the Title 42 Process constitute final agency action within the meaning of the APA.
- 338. Defendants' actions have caused, and will continue to cause, ongoing harm to Plaintiffs. Among other things, Defendants' application of the Title 42 Process to Individual Plaintiffs has harmed them by denying them a meaningful opportunity to apply for asylum and other relief as required by U.S. law and to access procedural protections to which they and other asylum seekers are entitled under the INA, FARRA, and other applicable U.S. law.
- 339. Defendants' application of the Title 42 Process to Haitian and presumed Haitian asylum seekers, including Individual Plaintiffs, also harms Haitian Bridge by impairing its programming and forcing it to divert resources away from its programs to assist the thousands of Haitian asylum seekers harmed by Defendants' conduct.
- 340. Plaintiffs, who have no adequate remedy at law, seek immediate review under the APA and declaratory and injunctive relief restraining Defendants from continuing to implement the Title 42 Process against Individual Plaintiffs and similarly situated Haitian asylum seekers.

## **SIXTH CLAIM FOR RELIEF**

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2) Arbitrary and Capricious Agency Action (Title 42 Process) All Plaintiffs Against All Defendants Other than President Biden

- 341. Plaintiffs reallege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
- 342. Under the APA, a court "shall . . . hold unlawful and set aside agency action" that is "arbitrary [and] capricious." 5 U.S.C. § 706(2)(A).
- 343. Agency action is arbitrary and capricious where the agency "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

- 344. Defendants' issuance, administration, and application of the Title 42 Process to Individual Plaintiffs and similarly situated asylum seekers is arbitrary and capricious, *see* 5 U.S.C. § 706(2)(A), in at least the following ways.
- 345. Defendants have not provided a reasoned explanation for their decision to apply the Title 42 Process to Haitian asylum seekers in Del Rio, including Individual Plaintiffs, and to expel such asylum seekers from the United States.
- 346. Defendants relied on improper considerations and factors Congress did not intend to be considered, including the use of a purported public health measure to deter immigration and restrict access to statutory and procedural protections guaranteed under U.S. immigration laws.
- 347. Defendants have entirely failed to consider important aspects of the problem when applying the Title 42 Process to Individual Plaintiffs. Among other factors, Defendants have failed to consider asylum seekers' fear of persecution or torture in the country to which they will be expelled; humanitarian exceptions to the Title 42 Process as provided for in the CDC Order; that their implementation of the Title 42 Process continues to place asylum seekers in congregate settings, contradicting its stated purpose; and the opinions of scientific experts that the Title 42 Process does not advance public health and in fact actually undermines public health.
- 348. Defendants also have failed to consider reasonable, less restrictive alternatives to applying the Title 42 Process to Individual Plaintiffs and Haitian asylum seekers in Del Rio. Among other alternatives, Defendants did not consider providing widely available COVID-19 testing or vaccinations to asylum seekers.
- 349. Defendants have also offered an explanation—public health— that runs counter to the evidence before the agency, as Defendants' own experts have warned that the Title 42 Process undermines public health.
- 350. Defendants' public health rationale is a pretextual means of restricting immigration and therefore is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.
  - 351. Defendants' issuance, administration, and application of the Title 42 Process

constitute final agency action within the meaning of the APA.

- 352. Defendants' actions have caused, and will continue to cause, ongoing harm to Plaintiffs. Among other things, Defendants' application of the Title 42 Process to Individual Plaintiffs has harmed them by denying them a meaningful opportunity to apply for asylum and other relief as required by U.S. law and to access procedural protections to which they and other asylum seekers are entitled under the INA, FARRA, and other applicable U.S. law.
- 353. Defendants' application of the Title 42 Process to Haitian and presumed Haitian asylum seekers, including Individual Plaintiffs, also harms Haitian Bridge by impairing its programming and forcing it to divert resources away from its programs to assist the thousands of Haitian asylum seekers harmed by Defendants' conduct.
- 354. Plaintiffs, who have no adequate remedy at law, seek immediate review under the APA and declaratory and injunctive relief restraining Defendants from continuing to implement the Title 42 Process against Individual Plaintiffs and similarly situated Haitian asylum seekers.

## **SEVENTH CLAIM FOR RELIEF**

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(1) Unlawfully Withheld or Unreasonably Delayed Agency Action All Plaintiffs Against Defendants CBP and ICE

- 355. Plaintiffs reallege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
- 356. The APA provides that a court "shall compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).
- 357. CBP officers have failed to take numerous discrete agency actions in connection with Defendant CBP's issuance, administration, and application of the Title 42 Process and implementation of the Haitian Deterrence Policy. Defendant CBP has unlawfully withheld or unreasonably delayed required agency action in at least the following ways:

# **Inspection and Asylum Referral Process**

358. CBP officers have a discrete, mandatory duty to inspect all noncitizens and if "the

[noncitizen] indicates either an intention to apply for asylum . . . or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer." 8 U.S.C. §§ 1225(a)(3), (b)(1)(A)(i)-(ii); 8 C.F.R. § 235.3(b)(4).

- 359. CBP officers have failed to inspect Individual Plaintiffs and similarly situated Haitian and presumed Haitian asylum seekers in Del Rio. CBP and ICE personnel have also failed to refer Individual Plaintiffs and similarly situated asylum seekers in Del Rio for asylum interviews.
- 360. By refusing to allow asylum seekers, including Individual Plaintiffs, a meaningful opportunity to apply for asylum or to access any statutory and procedural protections afforded under the INA and applicable U.S. law to which they are entitled, Defendant CBP has unlawfully withheld and unreasonably delayed discrete agency actions mandated by statute.

## Withholding of Removal

- 361. The INA and FARRA prohibit the United States from removing an individual to a country where it is more likely than not that they will face persecution or torture. *See* 8 U.S.C. § 1231(b)(3), note.
- 362. CBP officers have a discrete, mandatory duty to follow the procedures required by 8 U.S.C. § 1231(b)(3) and FARRA, *see* 8 U.S.C. § 1231 note, to determine whether a noncitizen faces a risk of persecution or torture and is therefore entitled to withholding of removal after full removal proceedings.
- 363. By refusing to follow those procedures, and thus refusing to allow asylum seekers, including Individual Plaintiffs, meaningful access to procedural protections mandated under the INA and FARRA withholding of removal provisions to which they are entitled, Defendant CBP has unlawfully withheld and unreasonably delayed discrete agency actions mandated by statute.

# Removal under the INA

364. The INA sets forth the only processes established by Congress to remove noncitizens from the United States. *See* 8 U.S.C. §§ 1225(b)(1); 1229a; *see generally* 8 U.S.C. § 1101, *et seq*.

- 365. To the extent Defendants seek to remove asylum seekers, including Individual Plaintiffs, from the United States, CBP and ICE officers have a discrete, mandatory obligation to follow the statutory and procedural protections relating to the removal of noncitizens under the INA and applicable U.S. law.
- 366. By refusing to follow the removal procedures set forth in the INA, see 8 U.S.C. §§ 1225(b)(1); 1229, and therefore refusing to allow asylum seekers, including Individual Plaintiffs, meaningful access to statutory and procedural protections relating to the removal of noncitizens mandated by the INA to which they are entitled, Defendants CBP and ICE have unlawfully withheld and unreasonably delayed discrete agency actions mandated by statute.

\* \* \*

- 367. CBP and ICE's failure to act as required by law, including the INA, FARRA, and other applicable U.S. law, is final agency action within the meaning of the APA.
- 368. CBP and ICE's failure to act as required by law has caused, and will continue to cause, ongoing harm to Plaintiffs. Among other things, Defendants CBP and ICE's failure to act as required by law has harmed Individual Plaintiffs by denying them a meaningful opportunity to apply for asylum and other relief as required under U.S. law and an opportunity to access procedural protections to which they and other asylum seekers are entitled under the INA, FARRA, and other applicable U.S. law.
- 369. CBP and ICE's failure to act also harms Haitian Bridge, which must divert resources away from its programs to assist the thousands of Haitian asylum seekers harmed by CBP and ICE's conduct.
- 370. Plaintiffs have no adequate alternative to review under the APA and thus seek review and an order compelling Defendants to take actions required by the INA, FARRA, and other applicable U.S. law pursuant to 5 U.S.C. § 706(1).

## EIGHTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)
Arbitrary and Capricious, An Abuse of Discretion, Not in Accordance with Law and In Excess of Statutory Authority 8 U.S.C. §§ 1158, 1231 (Haitian Deterrence Policy)

\*\*All Plaintiffs Against DHS Defendants\*\*

- 371. Plaintiffs reallege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
- 372. DHS Defendants' Haitian Deterrence Policy subjects Individual Plaintiffs and similarly situated individuals to gross abuses, including the denial of basic human needs, dignity in government detention, access to counsel and to the asylum process, and the right to non-refoulement, in an effort to deter Haitian asylum seekers from coming to the United States.
- 373. DHS Defendants' issuance, administration, and application of the Haitian Deterrence Policy is arbitrary and capricious because DHS Defendants have failed to consider or factor in Plaintiffs' humanitarian needs or right to access the U.S. asylum process and to access counsel when seeking asylum in the United States; failed to articulate a reasoned explanation for the decision to deny Individual Plaintiffs and similarly situated individuals these rights; and provided an explanation so implausible that it could not be ascribed to agency expertise.
- 374. The Haitian Deterrence Policy is further arbitrary and capricious because in its adoption and implementation, DHS Defendants considered factors that Congress did not intend for them to consider when engaging with and intercepting asylum seekers.
- 375. Additionally, by adopting and implementing the Haitian Deterrence Policy, DHS Defendants have acted in a manner not in accordance with law, contrary to constitutional right, in excess of their statutorily prescribed authority, and without observance of procedure required by law in violation of section 706(2) of the APA. See 5 U.S.C. §§ 706(2)(A)-(D).
- 376. By adopting and implementing a policy that contravenes the right to apply for asylum and the right to non-refoulement enshrined in the INA, DHS Defendants act not in accordance with law. See 8 U.S.C. §§ 1158, 1231.
- 377. By adopting and implementing a policy that departs from standard procedures and was motivated at least in part by discriminatory purpose based on race and presumed national

origin, DHS Defendants also act contrary to constitutional right. See U.S. Const. Amend. V.

- 378. DHS Defendants' adoption and implementation of the Haitian Deterrence Policy constitute final agency action within the meaning of the APA.
- 379. DHS Defendants' actions have caused, and will continue to cause, ongoing harm to Plaintiffs. Among other things, DHS Defendants' application of the Haitian Deterrence Policy to Individual Plaintiffs has harmed them by denying them a meaningful opportunity to apply for asylum and other relief as required by U.S. law and to access procedural protections to which they and other asylum seekers are entitled under the INA, FARRA, and other applicable U.S. law.
- 380. DHS Defendants' application of the Haitian Deterrence Policy to Haitian and presumed Haitian asylum seekers, including Individual Plaintiffs, also harms Haitian Bridge by impairing its programming and forcing it to divert resources away from its programs to assist the thousands of Haitian asylum seekers harmed by DHS Defendants' conduct.
- 381. Plaintiffs, who have no adequate remedy at law, seek immediate review under the APA and declaratory and injunctive relief restraining DHS Defendants from continuing to implement the Haitian Deterrence Policy against Individual Plaintiffs and similarly situated Haitian asylum seekers.

# **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

- a. An order certifying a class, pursuant to Federal Rules of Civil Procedure 23(b)(1) and (b)(2),), of all Haitian, or presumed Haitian, individuals who (1) sought access to the U.S. asylum process in or around the CBP Encampment near the Del Rio Port of Entry between September 9 and 24, 2021 and (2) were denied access to the U.S. asylum process;
  - b. An order appointing the undersigned as class counsel;
- c. An order declaring unlawful the Title 42 Process as applied to Individual Plaintiffs and class members;
  - d. An order declaring unlawful the Haitian Deterrence Policy as applied to Individual

Plaintiffs and class members;

- e. An order declaring that Defendants' application of the Title 42 Process and the Haitian Deterrence Policy alleged herein deprives Plaintiffs and class members of their Fifth Amendment rights;
- f. An order enjoining Defendants from applying the Title 42 Process to Individual Plaintiffs and class members;
- g. An order enjoining Defendants from applying the Haitian Deterrence Policy to Plaintiffs and class members;
- h. An order staying further expulsions of Individual Plaintiffs and class members under the Title 42 Process, removing them from the Title 42 Process, and affording them the statutory and procedural protections to which they are eligible under the U.S. asylum process and applicable laws, including access to asylum and withholding of removal under the INA and CAT withholding of removal under FARRA;
- i. An order allowing each of the Individual Plaintiffs and class members to return to the United States and requiring Defendants to facilitate return, with appropriate precautionary health measures, so that Individual Plaintiffs may pursue their asylum claims in the United States;
- j. An order awarding Plaintiffs their costs of suit and reasonable attorneys' fees and expenses pursuant to any applicable statute or regulation; and
  - k. An order granting such further relief as the Court deems just, equitable, and proper.

DATED: December 20, 2021

Respectfully submitted,

/s/ Karen C. Tumlin

**Stephen Manning** (application for admission forthcoming)

(b)(6)

Tess Hellgren (OR0023)

(b)(6)

INNOVATION LAW LAB 333 SW Fifth Avenue #200 Portland, OR 97204

Telephone: +1 503 922-3042 Facsimile: +1 503 882-0281

Nicole Phillips (pro hac vice forthcoming)

(b)(6)

HAITIAN BRIDGE ALLIANCE 4265 Fairmount Avenue, Suite 280

San Diego, CA 92105

Telephone: +1 949 603-5751

Karen C. Tumlin (CA00129)

(b)(6)

Esther H. Sung (CA00132)

(b)(6)

Daniel J. Tully (CA00130)

(b)(6)

Jane Bentrott (DC Bar No. 1029681) jane.bentrott@justiceactioncenter.org

**Lauren M. Wilfong** (application for admission pending)\*

(b)(6)

JUSTICE ACTION CENTER

P.O. Box 27280

Los Angeles, CA 90027 Telephone: +1 323 316-0944

Facsimile: +1 323 450-7276

\*Not admitted to practice in California

From:	VANGALDER, ANNIKA (b)(6) (b)(6)	
То:	SORENSEN, LAUREN (b)(6) (b)(6)	
CC:	ESEC-External Liaison (b)(6) (b)(6)	
Subject:	FW: Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol	ıg
Date:	2021/12/22 08:53:34	
Priority:	Normal	
Туре:	Note	

For packaging please, thank you SO SO much!!!

## 1222902 / 21-4621

From: VANGALDER, ANNIKA (b)(6)			
Sent: Wednesday, December 22, 2	021 8:36 AM		
To: SOLAIMANI, SHEILA (b)(6)			
Cc: O'CONNOR, KIMBERLY (b)(6)		Blackwell, Juliana	
(b)(6)	Fauquet, Stephanie (b)(6)	-	ESEC-
External Liaison (b)(6)			
		D	CDD

**Subject:** RE: Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol

Thank you very much Sheila! We will work to make sure this formatting is corrected.

Best, Annika

```
From: SOLAIMANI, SHEILA (b)(6)

Sent: Tuesday, December 21, 2021 5:40 PM

To: VANGALDER, ANNIKA (b)(6)

Cc: O'CONNOR, KIMBERLY (b)(6)

(b)(6)

Fauquet, Stephanie (b)(6)

EXECTION (b)(6)

EXECTION (b)(6)
```

**Subject:** RE: Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol

Hi all,

We clear the content (Charanya) but I think the bullet formatting in the clean version does not reflect the redline (the second bullet is tabbed in the first bullet on the clean version but on the redline it was a separate, distinct bullet). I would re-verify that. Thanks!

From: VANGALDER, ANNIKA (b)(6)
Sent: Tuesday, December 21, 2021 4:29 PM
To: SOLAIMANI, SHEILA (b)(6)
Cc: O'CONNOR, KIMBERLY (b)(6)  Blackwell, Juliana
(b)(6) Fauquet, Stephanie (b)(6) ESEC-
External Liaison (b)(6)
Subject: RE: Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP
regarding the U.S. Border Patrol Del Rio Horse Patrol
regarding the 0.3. Border ration bering morale ration
Good afternoon Sheila,
CBP had adjudicated this draft. Please find attached both a redline and clean version for the Counselors'
review, in addition to the incoming letter and cover letter.
review, in addition to the meeting fetter and cover fetter.
Please advise of clearance or anything else we may assist with.
Thank you!
Annilla Van Calden
Annika Van Galder
Office of the Executive Secretary
U.S. Department of Homeland Security
(b)(6)
(b)(6)
1222902 / 21-4621
From: SOLAIMANI, SHEILA (b)(6)
Sent: Friday, December 17, 2021 4:44 PM
<b>To:</b> Mueller, Pieter (b)(6)
Cc: O'CONNOR, KIMBERLY (b)(6) Blackwell, Juliana
(b)(6) Fauquet, Stephanie (b)(6) ESEC-
External Liaison (b)(6)
Subject: RE: Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP
regarding the U.S. Border Patrol Del Rio Horse Patrol
regarding the 0.3. Border ration beritto horse ration
Hi Pieter,
Please find the Immigration Team's edits attached. Thanks!
From: Mueller, Pieter (b)(6)
Sent: Wednesday, December 15, 2021 1:00 PM
To: SOLAIMANI, SHEILA (b)(6)
Cc: O'CONNOR, KIMBERLY (b)(6) Blackwell, Juliana
(b)(6) Fauguet, Stephanie (b)(6) ESEC-
External Liaison (b)(6)

**Subject:** Counselor Clearance Request: Response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol

Good afternoon Sheila,

Please find attached for your review the incoming letter, cover memo and draft response to Rep. Payne requesting an update from CBP regarding the U.S. Border Patrol Del Rio Horse Patrol

This response was drafted by CBP for Deputy Commissioner Miller's signature and has been cleared by the following Components:

- PRIV 11/9/21
- • MGMT 11/19/21
- • OPA 11/22/21
- • OLA 11/22/21
- PLCY 11/23/21
- • OPS 11/23/21
- • OGC 12/1/21

Please advise of your clearance or anything we may assist with.

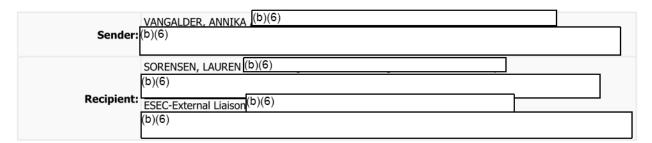
- • Deadline/Time sensitivities: Clearance requested by 12/17
- • Draft Received by ESEC: 12/15/21
- • Signature Level: CBP Signature
- Next Step: Package for DCOS/COS

Thanks, Pieter

Pieter Mueller
External Team Lead
Office of the Executive Secretary
U.S. Department of Homeland Security
Desk: (b)(6)

Desk: (b)(6)
Cell: (b)(6)
(b)(6)

1222902 21-4621



Sent Date: 2021/12/22 08:53:03

**Delivered Date:** 2021/12/22 08:53:34

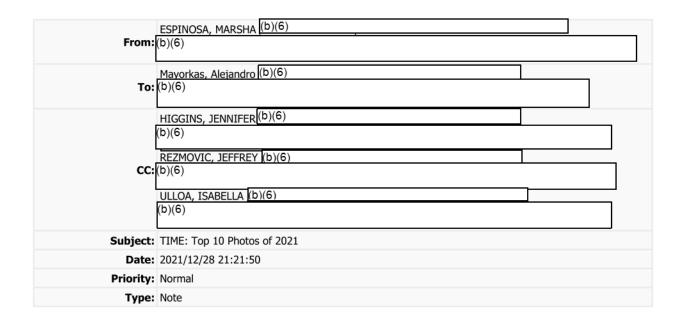
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COMPONENT TASKED: CB  DATE SUBMITTED TO FO:		DRAFT DUE DATE  DATE PACKAGED:		DATE APPROVE	D/SIGNED:
SUMMARY OF DOCUMENT RIO HORSE PATROL	: RESPONSE TO RE	EP. PAYNE REQUESTI	NG AN UPDATE FROM CBP	REGARDING THE U	J.S. BORDER PATROL DEL
CLEARED BY		DATE	CLEARED	В	DATE
PRIV		11/9/21	MGM	Т	11/19/21
OPA		11/22/21	OLA		11/22/21
PLCY		11/23/21	OPS		11/23/21
OGC/DCOS McC	LEARY	12/1/21	FO/Char	ANYA	12/21/21
OFFICE  DEPUTY CHIEF OF STAFF	SIGNATURE	E DATE		COMMENTS	

CHIEF OF STAFF

AFTER REVIEW RETURN TO: TELEPHONE
NANCY CLARK, COMPONENT LIAISON COORDINATOR, EXECUTIVE SECRETARIAT

TELEPHONE
D)(6)

APPROVED FOR AUTOPEN: \_\_\_\_\_ YES \_\_\_\_\_ NO DATE AND INITIALS FOR AUTOPEN APPROVAL: \_\_\_\_\_\_



For vis-

## TIME's Top 10 Photos of 2021 BY TIME PHOTO DEPARTMENT

Each year in November, the TIME photo team comes together to narrow down the thousands of images made by photographers around the world since January. The ones that make the final cut for our top 10 can be striking in composition, shocking to experience, news-making moments, or all of the above. We find ourselves pausing to honor these images and their creators because we know there is so much more to the photograph than just the click of a shutter.

The photographers in these situations care deeply for the people and environments in their images, building connections that go well beyond the single instant. Like Konstantinos Tsakalidis, who looked out for the wellbeing of the people in his photographs of the wildfires in his home country of Greece, while assessing his own safety. Or Meridith Kohut, who has been on the front lines of the COVID-19 surge, working 15-18 hour days alongside the staff—something she says is crucial to building the kind of trust with the people in her photos and being allowed in the room when scenes unfold. Or Scott McIntyre, who simply wanted to capture the joy of Spelling Bee winner Zaila Avant-garde.

These 10 images tell a story of a year full of hardships and perseverance, a year where photographs gave us glimpses of a world that often felt out of reach. The images, and the people who made them, show us the power of great photography: to move us, to connect us, and to remind us of our shared humanity.

—Kim Bubello and Ciara Nugent



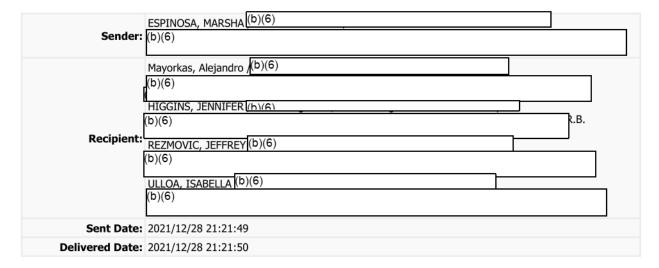
A U.S. Border Patrol agent grabs the shirt of a Haitian man while trying to stop migrants at the U.S.-Mexico border from crossing into Texas, on Sept. 19.

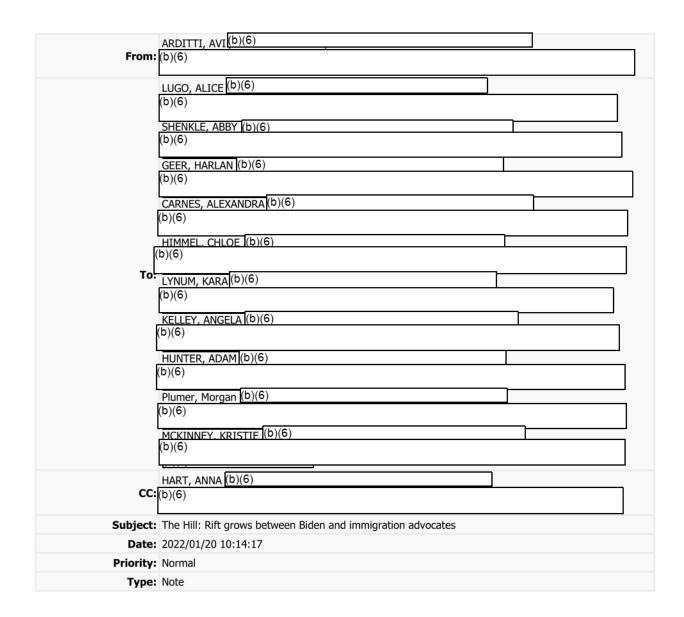
#### 'Criminalization of Desperate Migration'

In September, a sudden spike in the arrival of migrants from Haiti—which had been hit by a devastating earthquake in August—caught the Biden Administration off guard at the Texas border. Thousands of migrants gathered at a makeshift camp near Del Rio, under an international bridge, and were crossing back and forth over a dam on the Rio Grande into Mexico to buy food and water as they waited to be able to claim asylum.

On Sept. 19, photographer Paul Ratje navigated border closures imposed by U.S. authorities to make it to Ciudad Acuña on the Mexican side of the border. He was standing waist-deep in the river, photographing people making the crossing, when a group of border agents arrived on horseback on the U.S. side. "When I heard Border Patrol starting to shout at the migrants to leave the banks, I knew something tense was about to happen," Ratje says. He noticed a man in blue shorts starting to run up the bank, he adds. "The border patrol agent chased after him, grabbing his shirt. They spun around in a circle and the agent eventually let the man go. I was relieved that he was released appearing uninjured, and then he just disappeared over the bank of the river, and was gone."

The image that Ratje captured of this moment appeared on news wires and made its way into publications all over the country, sparking fierce reactions from both sides of the immigration debate, including on the iconography of the long leather reins that many viewers interpreted as whips. "There are so many layers to this scene. For many it echoes our country's dark history, while for others, it angers them that migrants are crossing our borders," Ratje says. "I learned that in our day and age, everything is subject to interpretation, despite how a given photographer may perceive their own image. To me, it simply shows the criminalization of desperate migration."





# The Hill: Rift grows between Biden and immigration advocates Rafael Bernal and Rebecca Beitsch | January 20, 2022

When images of Border Patrol agents on horseback aggressively corralling Haitian migrants filled the airwaves in September, immigration advocates were shocked to see cruelty that rivaled anything they'd denounced under former President Trump.

What followed was not the reckoning on immigration enforcement that President Biden's allies in immigration advocacy expected, but a top-level push to send immigration to the back burner in favor of other policy issues.

"I never would have predicted this White House, within Year One, would be expelling Haitians to a failed state," said Frank Sharry, executive director of America's Voice, a progressive immigration policy organization.

"In December of 2020 we're talking about a transformative vision. And in 2022, expelling Haitians without a meaningful asylum process. Wow."

The arrival and subsequent expulsion of about 15,000 Haitians in Del Rio, Texas, and its aftermath cemented advocates' fears that Biden's early promises of an optimistic, wide-ranging, humanitarian approach to immigration had devolved into a tactical day-to-day management of a political liability.

A year in to the Biden administration, policy victories have been overshadowed by Trump-era holdovers that together block the majority of migrants from seeking asylum: either immediately expelling them from the U.S. without the chance to apply — the outcome for many Haitians in Del Rio — or forcing them, like under Biden's predecessor, to await their asylum court date in Mexico.

"The administration started very strong and announced a lot of things as on Inauguration Day or shortly thereafter that many of us took as a positive signal of things to come," said Jorge Loweree, policy director with the American Immigration Council, pointing to Biden's reversal of the so-called Muslim travel ban.

But the politics of the border have clouded many of its immigration decisions, he said.

"The issues at the border seemingly made the administration reticent to do much of anything on immigration for fear of the potential consequences, which has been very disappointing," he said. "Frankly, things could have gone much different."

Biden administration officials on Wednesday went on a media blitz to defend the administration's accomplishments, with Homeland Security Secretary Alejandro Mayorkas and Esther Olavarria, the deputy director for immigration on the Domestic Policy Council, touting the administration's immigration accomplishments.

"In this first year, we have been building an immigration system that was dismantled by the prior administration. We have had to rescind cruel policies, bring offices back to life, issue new policies, rebuild entire operations," said Mayorkas.

"At the outset, we established a fundamental principle, and that is the respect for the dignity of each individual," he added.

Biden has signed nearly 300 executive actions on immigration, many of them reversing Trump policies like the public charge rule, and moved away from an immigration enforcement agenda where any undocumented person was considered a priority for removal.

Still, the administration has placed emphasis on touting economic and social policies — not immigration — in talking points distributed to congressional offices by the White House for Biden's first anniversary as president. In those talking points, there was not a single note on immigration.

Two policies are central to the rift between the administration and advocates: Title 42 and the Migrant Protection Protocols (MPP), also known as "Remain in Mexico."

"If we look at the whole picture, we've made some progress as policy goals: the plans to boost refugee admissions, the halt to workplace raids, ending enforcement of the public charge," said Rep. Jesús García (D-III.), one of three Democrats who led the charge to keep immigration provisions in Biden's signature Build Back Better (BBB) legislation.

"But of course, I remain alarmed by the number of Trump's worst policies that are still in place — Title 42 and Remain in Mexico," added García.

The latter is a policy that by the administration's own admission cannot be humanely implemented: It requires prospective asylum-seekers to wait in Mexico while their claims are adjudicated by U.S. courts.

Mayorkas has twice issued memos rescinding MPP, but courts have forced the Biden administration to reimplement it.

While Mayorkas has denounced MPP, the Department of Homeland Security also expanded the program as it sought to fulfill court orders requiring continued implementation of MPP, a program that under Trump only applied to citizens of El Salvador, Guatemala and Honduras.

"This isn't Remain in Mexico as we know it. It's an expansion — the Biden administration policy expands the nationalities subject to forcible returns," said García.

And Title 42, on paper a pandemic-related sanitary protection that allows U.S. officials to immediately expel foreign nationals caught at the border under the auspices of Centers for Disease Control and Prevention authority, has been even more divisive.

Administration officials had signaled they would wind down Title 42, but that initiative lost steam with the emergence of the Delta variant and nonstop press coverage of Del Rio and monthly border apprehension numbers.

"We kept hearing Title 42 is going to be taken down in late 2020, or at least rumors of that and they were making arrangements," said Sharry, of America's Voice.

"But they didn't stick with it. They didn't follow through. Instead of going forward, they decided to go back and take the heat. I just think that as a policy matter, it's a short-term reaction that will solve nothing in the end, and as a political matter, I think it's trying to placate those who hate you instead of deliver for those who back you," he added.

The Biden administration's sensitivity to press coverage and criticism from the right has become a major point of frustration for immigrant advocates throughout the political spectrum.

"I think the key decision makers in the Biden administration are of the position that migrants who are already here are beneficial and should be integrated and should get citizenship," said David Bier, an immigration policy expert at the Cato Institute.

"But future immigration is not seen as an opportunity to be harnessed to the benefit of a country, it's seen as a detriment. It's seen as a problem to be managed, rather than an opportunity to grow and improve the country," added Bier.

Faced with a wide array of domestic and international challenges, the administration and its closest Democratic allies have become hypersensitive to criticism on immigration, choosing instead to publicly address other policy priorities.

"The hypersensitivity could be coming either from Republicans that are trying to project, I think wrongfully, that everything that's wrong with our country is directly connected to the migration patterns on the southern border, or the hypersensitivity could also come from that guy on a horse with a whip," said Rep. Adriano Espaillat (D-N.Y.).

That risk-averse approach has made the administration stingy when called upon to expend political capital on immigration bills in Congress.

After an initial proposal that laid out the administration's immigration wish-list, including a pathway to citizenship for 11 million people, the pledge to pass systematic immigration reform through Congress never materialized.

Discussions in Congress to include immigration in the BBB proposal whittled away the number of immigrants that it would help, as the Senate parliamentarian repeatedly rejected proposals that she said stretched the bounds of procedures needed to pass legislation with just 50 votes.

García, along with Espaillat and Rep. Lou Correa (D-Calif.), threatened to vote against both BBB and the bipartisan infrastructure deal if immigration provisions were discarded.

Ultimately, the House passed a bill that would provide up to 10 years of work authorization for those already in the U.S., a status that could be used as a springboard to citizenship for up to 3 million people. The Senate has yet to take up the measure.

"The administration obviously deserves credit for very early on sending a broad immigration reform package to Congress. But we've also seen a lack of leadership from the administration during the legislative debates that followed. It was at many moments unclear what the administration supported and believed to be priorities, which complicated matters on the Hill," Loweree said.

The failure to legislate — hardly exclusive to the Biden administration — was preceded by Biden's high-flying campaign promises and the pain of unfettered immigration enforcement during the Trump administration.

In the whiplash between a president who'd promised a wall and mass deportations and a president with the most liberal immigration platform in decades, advocates saw an opportunity for a realistic shot at reform, whether legislative or through executive action.

"We have not seen the president really step up to the plate on those more politically challenging issues. And he needs to do that to deliver on his promises and to uphold his own vision and principles on immigration," said Greg Chen, director of government relations for the American Immigration Lawyers Association.

Sen. Bob Menendez (D-N.J.), who led the Senate push to include immigration in BBB, put the onus on the administration to keep the issue alive.

"In 2022, when immigration policy and border management will be focal points of national debate, the Biden-Harris administration cannot run away from immigration policy," Menendez said.

"Instead, it is the time for them to work in lockstep with Congress on any and all options to achieve inclusive and humane reform," he added.

And some Democrats saw the opportunity to build base loyalty to rival Trump's, or the risk of alienating immigrant-friendly voters.

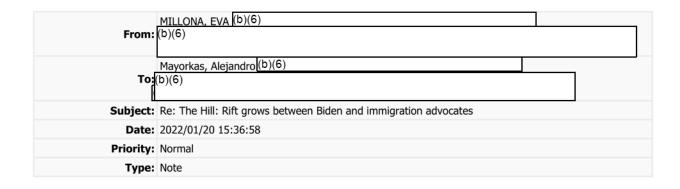
"I probably represent the largest number of Dreamers in the country, and my community is certainly immigrant and not only Latino, but from around the world. People are saying, you know, we've had it with Democratic promises," said Correa.

"So this is a very precarious position right now for the Democratic Party. If nothing is done on immigration reform, there's going to be some difficult challenges for the Democrats next election cycle," he added.

Sender	ARDITTI, AVI (b)(6)	
	LUGO, ALICE (b)(6) (b)(6)	
	SHENKLE, ABBY (b)(6)	
	(b)(6)  GEER, HARLAN (b)(6)	
	(b)(6)	
	CARNES, ALEXANDRA (b)(6) (b)(6)	
	HIMMEL, CHLOE (b)(6)	
	(b)(6)	
Recipient	LYNUM, KARA (b)(6) :(b)(6)	
	KELLEY, ANGELA (b)(6)	
	(b)(6)  HUNTER, ADAM (b)(6)	
	(b)(6)	
	Plumer, Morgan (b)(6) (b)(6)	
	MCKINNEY, KRISTIE (b)(6)	
	(b)(6)	
	HART, ANNA (b)(6) (b)(6)	

Sent Date: 2022/01/20 10:14:15

**Delivered Date:** 2022/01/20 10:14:17



Many thanks, Sir. From: Mayorkas, Alejandro (b)(6) Sent: Thursday, January 20, 2022 3:34:57 PM To: MILLONA, EVA (b)(6) Subject: Fwd: The Hill: Rift grows between Biden and immigration advocates Alejandro N. Mayorkas Secretary From: ESPINOSA, MARSHA (b)(6) Sent: Thursday, January 20, 2022 1:44:53 PM To: Mayorkas, Alejandro (b)(6) Cc: CANEGALLO, KRISTIE (b)(6) REZMOVIC, JEFFREY (b)(6) ULLOA, ISABELLA (b)(6) SEIDMAN, RICKI (b)(6) KELLEY, ANGELA (b)(6) LUGO, ALICE (b)(6)

**Subject:** The Hill: Rift grows between Biden and immigration advocates

The Hill: Rift grows between Biden and immigration advocates
Rafael Bernal, 1/20/22

When images of Border Patrol agents on horseback aggressively corralling Haitian migrants filled the airwaves in September, immigrant advocates were shocked to see cruelty that rivaled anything they'd denounced under former President Trump.

"I never would have predicted this White House, within year one, would be expelling Haitians to a failed state," said Frank Sharry, executive director of America's Voice, a progressive immigration policy organization.

"In December of 2020 we're talking about a transformative vision. And in 2022, expelling Haitians without a meaningful asylum process. Wow."

The arrival and subsequent expulsion of about 15,000 Haitians to Del Rio, Texas and its aftermath cemented advocates' fears that Biden's early promises of an optimistic, wide-ranging, humanitarian approach to immigration had devolved into a tactical day-to-day management of a political liability.

A year into the Biden administration, policy victories have been overshadowed by Trump-era holdovers that together block the majority of migrants from seeking asylum: either immediately expelling them from the U.S. without the chance to apply – the outcome for many Haitains in Del Rio – or forcing them, like under Biden's predecessor, to await their asylum court date in Mexico.

"The administration started very strong and announced a lot of things as on Inauguration Day or shortly thereafter that many of us took as a positive signal of things to come," said Jorge Loweree, policy director with the American Immigration Council, pointing to Biden's reversal of the so-called Muslim travel ban.

But the politics of the border have clouded many of its immigration decisions, he said.

"The issues at the border seemingly made the administration reticent to do much of anything on immigration for fear of the potential consequences, which has been very disappointing," he said. "Frankly, things could have gone much different."

Biden administration officials on Wednesday went on a media blitz to defend the administration's accomplishments, with Homeland Security Secretary Alejandro Mayorkas and Deputy Director of the Domestic Policy Council for Immigration Esther Olavarría touting the administration's immigration accomplishments.

"In this first year, we have been building an immigration system that was dismantled by the prior administration. We have had to rescind cruel policies, bring offices back to life, issue new policies, rebuild entire operations," said Mayorkas.

"At the outset, we established a fundamental principle and that is the respect for the dignity of each individual," he added.

Biden has signed nearly 300 executive actions on immigration, many of them reversing Trump policies like the public charge rule, and moved away from an immigration enforcement agenda where any undocumented person was considered a priority for removal.

Still, the administration has placed emphasis on touting economic and social policies, not immigration – in talking points distributed to congressional offices by the White House for Biden's first anniversary as president. In those talking points, there was not a single note on immigration.

Two policies are central to the rift between the administration and advocates: Title 42 and the Migrant Protection Protocols (MPP), also known as "Remain in Mexico."

"If we look at the whole picture, we've made some progress as policy goals: the plans to boost refugee admissions, the halt to workplace raids, ending enforcement of the public charge," said Rep. Jesús García (D-III.), one of three Democrats who led the charge to keep immigration provisions in Biden's signature Build Back Better (BBB) legislation.

"But of course, I remain alarmed by the number of Trump's worst policies that are still in place – Title 42 and Remain in Mexico," added García.

The latter is a policy that by the administration's own admission cannot be humanely implemented: It requires prospective asylum seekers to wait in Mexico while their claims are adjudicated by U.S. courts.

Mayorkas has twice issued memos rescinding MPP, but courts have forced the Biden administration to re-implement it.

While Mayorkas has denounced MPP, the Department of Homeland Security also expanded the program as it sought to fulfill court orders requiring continued implementation of MPP, a program that under Trump only applied to citizens of El Salvador, Guatemala and Honduras.

"This isn't Remain in Mexico as we know it. It's an expansion – the Biden administration policy expands the nationalities subject to forcible returns," said García.

And Title 42, on paper a pandemic-related sanitary protection that allows U.S. officials to immediately expel foreign nationals caught at the border under the auspices of Centers for Disease Control and Prevention (CDC) authority, has been even more divisive.

Administration officials had signaled they would wind down Title 42, but that initiative lost steam with the emergence of the Delta variant and nonstop press coverage of Del Rio and monthly border apprehension numbers.

"We kept hearing Title 42 is going to be taken down in late 2020, or at least rumors of that and they were making arrangements," said Sharry.

"But they didn't stick with it. They didn't follow through. Instead of going forward, they decided to go back and take the heat. I just think that as a policy matter, it's a short-term reaction that will solve nothing in the end, and as a political matter, I think it's trying to placate those who hate you instead of deliver for those who back you," he added.

The Biden administration's sensitivity to press coverage and criticism from the right has become a major point of frustration for immigrant advocates throughout the political spectrum.

"I think the key decision makers in the Biden administration are of the position that migrants who are already here are beneficial and should be integrated and should get citizenship," said David Bier, an immigration policy expert at the Cato Institute.

"But future immigration is not seen as an opportunity to be harnessed to the benefit of a country, it's seen as a detriment. It's seen as a problem to be managed, rather than an opportunity to grow and improve the country," added Bier.

Faced with a wide array of domestic and international challenges, the administration and its closest Democratic allies have become hypersensitive to criticism on immigration, choosing instead to publicly address other policy priorities.

"The hypersensitivity could be coming either from Republicans that are trying to project, I think wrongfully, that everything that's wrong with our country is directly connected to the migration patterns on the southern border, or the hypersensitivity could also come from that guy on a horse with a whip," said Rep. Adriano Espaillat.

That risk-averse approach has made the administration stingy when called upon to expend political capital on immigration bills in Congress.

After an initial proposal that laid out the administration's immigration wish-list, including a pathway to citizenship for 11 million people, the pledge to pass systematic immigration reform through Congress never materialized.

Discussions in Congress to include immigration in the BBB proposal whittled away the number of immigrants that it would help, as the Senate parliamentarian repeatedly rejected proposals that she said stretched the bounds of procedures needed to pass legislation with just 50 votes.

Ultimately the House passed a bill that would provide up to 10 years of work authorization for those already in the U.S., a status that could be used as a springboard to citizenship for up to 3 million people. The Senate has yet to take up the measure.

"The administration obviously deserves credit for very early on sending a broad immigration reform package to Congress. But we've also seen a lack of leadership from the administration during the legislative debates that followed. It was at many moments unclear what the administration supported and believed to be priorities, which complicated matters on the Hill," Loweree said.

The failure to legislate – hardly exclusive to the Biden administration – was preceded by Biden's highflying campaign promises and the pain of unfettered immigration enforcement during the Trump administration.

In the whiplash between a president who'd promised a wall and mass deportations and a president with the most liberal immigration platform in decades, advocates saw an opportunity for a realistic shot at reform, whether legislative or through executive action.

"We have not seen the president really step up to the plate on those more politically challenging issues. And he needs to do that to deliver on his promises and to uphold his own vision and principles on immigration," said Greg Chen, director of government relations for the American Immigration Lawyers Association.

Sen. Bob Menéndez (D-N.J.), who led the Senate push to include immigration in BBB, put the onus on the administration to keep the issue alive.

"In 2022, when immigration policy and border management will be focal points of national debate, the Biden-Harris administration cannot run away from immigration policy," said Menéndez.

"Instead, it is the time for them to work in lockstep with Congress on any and all options to achieve inclusive and humane reform," he added.

And some Democrats saw the opportunity to build base loyalty to rival Trump's, or the risk of alienating immigrant-friendly voters.

"I probably represent the largest number of Dreamers in the country, and my community is certainly immigrant and not only Latino, but from around the world. People are saying, you know, we've had it with Democratic promises," said Correa.

"So this is a very precarious position right now for the Democratic Party. If nothing is done on immigration reform, there's going to be some difficult challenges for the Democrats next election cycle," he added.

Sender:		
Recipient:	Mayorkas, Alejandro (b)(6) (b)(6)	
Sent Date:	2022/01/20 15:36:57	
Delivered Date:	2022/01/20 15:36:58	

	SEIDMAN, RICKI (b)(6)
From:	(b)(6)
	MAIA SILVA, EDUARDO (b)(6)
	(b)(6)
	ULLOA, ISABELLA (b)(6) (b)(6)
	PECK, SARAH (b)(6) (b)(6)
	NUNEZ-NETO, BLAS (b)(6)
10:	(b)(6)
	ESPINOSA, MARSHA (b)(6)
	(b)(6)
	CANEGALLO, KRISTIE (b)(6)
	(b)(6)
	REZMOVIC, JEFFREY (b)(6)
	(b)(6)
	(I-)(C)
	WATERS, ERIN (b)(6) (b)(6)
cc.	
	DASKAL, JENNIFER (D)(6)
	(b)(6)
Subject:	Re: Yuma readout chain
Date:	2022/01/26 17:15:17
Priority:	Normal
Туре:	Note

Make sure Marsha reviews.

Change feedback to hear about their experience and

So

Change admirable in their dedication to ... are dedicated to..

Flip the order of the sentence so candor is first and appreciates and respects follows.

Then, on background

: The Secretary invited frank discussion and made the Agents feel comfortable asking a wide range of questions and expressing opinions. That is the point of the trip — to hear from them unfiltered. On the first day of this three-day trip, there have already been many constructive discussions.

Thanks

From: MAIA SILVA, EDUARDO (b)(6)		
Sent: Wednesday, January 26, 202		
To: SEIDMAN, RICKI (b)(6)	ULLOA, ISABELLA (b)(6)	
PECK, SARAH (b)(6)	NUNEZ-NETO, BLAS (b)(6)	
ESPINOSA, MARSHA (b)(6)	CANEGALLO, KRISTIE	
(b)(6)	REZMOVIC, JEFFREY (b)(6)	
Cc: WATERS, ERIN (b)(6)	DASKAL, JENNIFER (b)(6)	

**Subject:** RE: Yuma readout chain

Thank you, Ricki. Updated statement below with your feedback incorporated:

#### **DHS Statement**

From: SEIDMAN, RICKI (b)(6)

Sent: Wednesday, January 26, 2022 4:17 PM

Secretary Mayorkas's priority for this trip is to meet directly with the workforce to hear their feedback and address their needs.

Border Patrol Agents are admirable in their dedication to their mission, and demonstrate tremendous bravery and life-saving skills in the performance of their duties. Secretary Mayorkas appreciates and respects the opinions of each member of the CBP workforce, and welcomes candor during these conversations.

**On background:** During the meeting, some Border Patrol Agents shared their opinions. The Secretary is participating in this trip to hear the workforce's perspectives directly. On the first day of this three-day trip, there have already been many constructive discussions.

To: ULLOA, ISABELLA (b)(6)	MAIA SILVA, E	EDUARDO
(b)(6)	PECK, SARAH (b)(6)	NUNEZ-NETO, BLAS
(b)(6)	ESPINOSA, MARSHA (b)(6)	CANEGALLO,
KRISTIE (b)(6)	REZMOVIC, JEFFREY	(b)(6)
Cc: WATERS, ERIN (b)(6)	DASKAL, JENNIFER	(b)(6)
Subject: Re: Yuma readout chair	١	
In the second paragraph work ir	ı language from tweet, include ch	allenges but definitely add lifesaving,
and maybe brave.		
seeking feedback and there was	a lot of constructive discussion.	to the effect that S1 made the trip
At this Weldon muster and conv	rersation is a lot more respectful.	
From: ULLOA, ISABELLA (b)(6)		
Sent: Wednesday, January 26, 2		
To: MAIA SILVA, EDUARDO (b)(6)		CK, SARAH (b)(6)
NUNEZ-NETO, BLAS (b)(6)	ESPINOSA, N	
(b)(6)	CANEGALLO, KRISTIE (b)(6)	REZMOVIC,
JEFFREY (b)(6)	SEIDMAN, RICKI (b)(6)	
Cc: WATERS, ERIN (b)(6)	DASKAL, JENNIFER	(b)(6)
Subject: Re: Yuma readout chair	1	
Defer to Jeff and Ricki.		
From: MAIA SILVA, EDUARDO	)(6)	
Sent: Wednesday, January 26, 2		
To: PECK, SARAH (b)(6)	NUNEZ-NETO, BLAS	(b)(6)

ULLOA, ISABELLA (b)(6)	ESPINOSA, MARSHA (b)(6)
CANEGALLO, KRISTIE (b)(6)	REZMOVIC, JEFFREY
(b)(6)	SEIDMAN, RICKI (b)(6)
Cc: WATERS, ERIN (b)(6)	DASKAL, JENNIFER (b)(6)
Subject: RE: Yuma readout chair	1

Moving this up. We now have an inquiry from Fox News in addition to Reuters.

Thank you!

#### **DHS Statement**

Secretary Mayorkas's priority for this trip is to meet directly with the workforce to hear their feedback and address their needs.

Border Patrol Agents are admirable in their dedication to their mission, and conduct challenging work on the frontlines every day to keep our borders secure. Secretary Mayorkas appreciates and respects the opinions of each member of the CBP workforce, and welcomes candor during these conversations.

**On background:** During the meeting, some Border Patrol Agents shared their opinions. However, not all participants spoke up during the engagement.

From: MAIA SILVA, EDUARDO	
Sent: Wednesday, January 26, 2022 2:08 PM	
To: PECK, SARAH (b)(6)	NUNEZ-NETO, BLAS (b)(6)
ULLOA, ISABELLA (b)(6)	ESPINOSA, MARSHA (b)(6)
CANEGALLO, KRISTIE (b)(6)	REZMOVIC, JEFFREY
(b)(6) SEIDMAN, RI	CKI (b)(6)
Cc: WATERS, ERIN (b)(6)	DASKAL, JENNIFER (b)(6)
Subject: RE: Yuma readout chain	
Tweaked the statement below to add in some	additional information on background.
From: MAIA SILVA, EDUARDO	
Sent: Wednesday, January 26, 2022 1:30 PM	
To: PECK, SARAH (b)(6)	NUNEZ-NETO, BLAS (b)(6)
ULLOA, ISABELLA (b)(6)	ESPINOSA, MARSHA (b)(6)
CANEGALLO, KRISTIE (b)(6)	REZMOVIC, JEFFREY
(b)(6) SEIDMAN, RI	CKI (p)(e)
Cc: WATERS, ERIN (b)(6)	DASKAL, JENNIFER (b)(6)
Subject: RE: Yuma readout chain	

All – Below is a draft statement for consideration. We've received an inquiry from Reuters on the Townhall story, but no others at this time.

#### **DHS Statement**

Secretary Mayorkas's priority for this trip is to meet directly with the workforce to hear their feedback and address their needs.

Border Patrol Agents are admirable in their dedication to their mission, and conduct challenging work on the frontlines every day to keep our borders secure. Secretary Mayorkas appreciates and respects the opinions of each member of the CBP workforce, and welcomes candor during these conversations.

**On background:** During the meeting, some Border Patrol agents shared their opinions. However, not all participants spoke up during the engagement.

From: PECK, SARAH (b)(6)		
Sent: Wednesday, January 26, 2	022 12:15 PM	
To: NUNEZ-NETO, BLAS (b)(6)	ULLOA, ISABELLA (b)(6)	
ESPINOSA, MARSHA (b)(6)	CANEGALLO, KRISTIE	
(b)(6)	REZMOVIC, JEFFREY (b)(6)	SEIDMAN,
RICKI (b)(6)		
Cc: MAIA SILVA, EDUARDO (b)(6)	WATERS, ERIN	
(b)(6) DAS	SKAL, JENNIFER (b)(6)	
Subject: RF: Yuma readout chair	<u></u> _	

Flagging this. Townhall is a partisan outlet. No further inquiries at this time.

Townhall: EXCLUSIVE: DHS Secretary Had a Disastrous Meeting with Border Patrol Agents (Julio Rosas)

Department of Homeland Security (DHS) Secretary Alejandro Mayorkas' meeting with Border Patrol agents in the Yuma Sector on Wednesday did not go well after he admitted the staggering amount of illegal border crossings has made the agents' job more difficult.

In an audio recording of his remarks to the agents, which was obtained by Townhall, Mayorkas conceded the massive influx of people illegally crossing into the sector, along with the rest of the southern sectors, has not been easy.

"The job has not gotten any easier over the last few months and it was very, very difficult throughout 2021. I know apprehending families and kids is not what you signed up to do. And now we got a composition that is changing even more with Cubans, Venezuelans, Nicaraguans, and the like, it just gets more difficult," Mayorkas said in the recording.

Mayorkas said DHS is trying to work with the Mexican government to stop the flow of immigrants before they reach the U.S. border.

"I know the policies of this administration are not particularly popular with U.S. Customs and Border Protection, but that's the reality and let's see what we can do within that framework," Mayorkas added.

An agent pressed Mayorkas on how DHS can reconcile saying border security is the main mission for Border Patrol, yet agents are unable to patrol the border due to the policies the Biden administration has in place. Border Patrol agents are being utilized to process the thousands of illegal immigrants.

Mayorkas said he "appreciated the candor" and explained he is working to ensure agents have the personnel, funding, and equipment they need to do their job. The agents replied they have been hearing that answer for years.

According to sources present at the meeting and the audio recording, the agent who asked the question then turned his back on Mayorkas.

"Let me just say, you can turn your back on me but I won't turn my back on you," Mayorkas said. The agent replied Mayorkas turned his back on the agents first.

Another agent told Mayorkas there are a many issues in the Yuma Sector, pointing to the overcrowding of family units at their processing site and that handling them is not their responsibility. Mayorkas reiterated that agents being pulled off of the border to process illegal immigrants is not what they signed up to do.

The second agent said it has been "demoralizing" to see politicians and others "demonize" Border Patrol when they often save illegal immigrants from injury and death. It is a possible reference to the outrage that started over false claims agents on horseback were "whipping" people illegally crossing the border in the Del Rio Sector, which included Mayorkas, Vice President Kamala Harris, President Joe Biden.

Mayorkas said he understands being demonized because he has had threats against his life and the life of his family.

Another agent asked Mayorkas about the low number of people being enrolled in the Migrant Protection Protocols, also known as "Remain in Mexico," a policy the Biden administration was forced to re-up by court order after President Biden attempted to shut down the program.

"The numbers are not where they need to be. I agree with that," Mayorkas admitted, adding the U.S. is still negotiating with Mexico.

Mayorkas revealed he has approved for gaps in the border wall system, which was created when Biden ordered a halt on construction, to be filled, particularly where gates were supposed to be installed.

"Look it's worse now than it, frankly, has been in at least 20 years, if not ever," Mayorkas said at another point in the meeting regarding the overall situation at the border.

One exasperated agent told Mayorkas the situation in the Yuma Sector was much better under former President Donald Trump because "everyone was doing their jobs."

In the recording, Border Chief Patrol Raul Ortiz did not seem happy with the questions being asked because, according to him, it came off as griping instead of coming to Mayorkas with solutions.

Mayorkas can be then heard going back to the first agent who turned his back on him and asked how long he had been part of Border Patrol. When the agent replied with 16 years, Mayorkas said he was prosecuting death penalty cases in California, "you don't know anything about me."

The agent said he knows Mayorkas has had a long career, but "you said you're going to change it, the only that's changed is it's gotten worse."

Sources at the meeting told Townhall Mayorkas was visibly upset. DHS did not respond to a request for comment in time for publication.

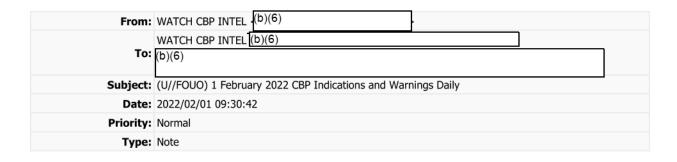
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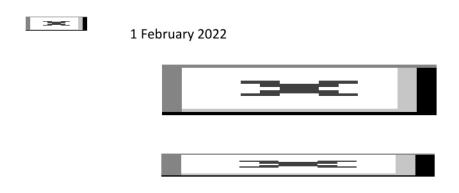
From: NUNEZ-NETO, BLAS (b)(6)			
Sent: Wednesday, January 26, 2	.022 11:17 AM		
To: ULLOA, ISABELLA (b)(6)	ESPINOSA	, MARSHA	
(b)(6)	CANEGALLO, KRISTIE (b)(6)		REZMOVIC,
JEFFREY (b)(6)	SEIDMAN, RICKI (b)(6	5)	
Cc: MAIA SILVA, EDUARDO (b)(6)		PECK, SARAH (b)(6)	
WATERS, ERIN (b)(6)	DASKAL, JENNIFER		
Subject: Re: Yuma readout chai	n		
No final agreement yet, so no ti	meline. State still needs to de	liver the kits and may be we	eks away
From: ULLOA, ISABELLA (b)(6)			
Sent: Wednesday, January 26, 2	2022 11:08:37 AM		
To: ESPINOSA, MARSHA (b)(6)		NEGALLO, KRISTIE	
(b)(6)	REZMOVIC, JEFFREY (b)(6	)	NUNEZ-NETO,
BLAS (b)(6)	SEIDMAN, RICKI (b)(6)		
Cc: MAIA SILVA, EDUARDO (b)(6)		PECK, SARAH (b)(6)	
WATERS, ERIN (b)(6)	DASKAL, JENNIFER	(b)(6)	
Subject: RE: Yuma readout chai	n		
Thanks. Plus Jen.			
What's the timing of the T42 an	nouncement?		
From: ESPINOSA, MARSHA (b)(6)			
Sent: Wednesday, January 26, 2	2022 9:28 AM		
To: CANEGALLO, KRISTIE (b)(6)		REZMOVIC, JEFFREY	
(b)(6)	ULLOA, ISABELLA (b)(6)	NUNEZ-1	NETO, BLAS
(b)(6)	SEIDMAN, RICKI (b)(6)		
Cc: MAIA SILVA, EDUARDO (b)(6)		PECK, SARAH (b)(6)	
WATERS, ERIN (b)(6)			
Subject: Yuma readout chain			

Morning muster in Yuma was ROUGH. One agent in the front town had his back turned to S1 the entire time only to ask a question and then turned back. Agent sentiment (the ones that spoke up) is that policies aren't working, dont like masks or vaxx mandate. B1 stepped up to provide support and asked to intro S1 next time to better set up.

One flag: S1 mentioned T42 is expanding to the 3 countries we haven't publicly announced yet. May leak.

Sender:	
	MAIA SILVA, EDUARDO (b)(6) (b)(6)  ULLOA, ISABELLA (b)(6) (b)(6)  PECK, SARAH (b)(6) (b)(6)  NUNEZ-NETO, BLAS (b)(6) (b)(6)  ESPINOSA, MARSHA (b)(6) (b)(6)  CANEGALLO, KRISTIE (b)(6) (b)(6)  REZMOVIC, JEFFREY (b)(6) (b)(6)  WATERS, ERIN (b)(6) (b)(6)
	(b)(6) 2022/01/26 17:15:16 2022/01/26 17:15:17
Delivered Date.	2022/01/20 17:13:17





(U) Ongoing Situation

- (U) Russia, U.S., Ukraine to Meet at United Nations Security Council Russian and the United States met at the UN Security Council on 31 January to discuss Moscow's troop buildup on the Ukrainian border. Russia tried to block the 15-member Security Council from holding the meeting with its envoy to the UN, Vasily Nebenzya, accusing the United States of trying to "whip up hysteria" by pushing the debate. China's ambassador sided with Russia noting that Moscow has repeatedly stated that it has no plans to launch any military action against the Ukraine.
- (U) U.S. Urges North Korea to Join Direct Talks After Missile Test The United States is concerned North Korea's escalating missile tests could be precursors to resumed tests of nuclear weapons and intercontinental ballistic missiles, a senior U.S. official said on 30 January, while urging Pyongyang to join direct talks with no preconditions. North Korea conducted its largest missile test since 2017 on 30 January.
- (U) Canadian Truck Drivers Travel to Ottawa to Protest Government Mandated Vaccines Protesters in Ottawa, Canada, say they have no plans to leave despite pleas from public officials to disperse after several days of major demonstrations. The "Freedom Convoy," made up of truck drivers, originally drove to Ottawa to oppose the government's vaccine mandate for cross-border drivers. The largely peaceful demonstrations have produced several notable incidents, including video showing a protester dancing on Canada's Tomb of the Unknown Soldier. [IV]

### (U) Terrorism/Counterintelligence/Insider Threat

- **(U) Five Killed by Roadside Bomb in Northern Kenya** Five people were killed on 31 January when a minibus in northeast Kenya was destroyed by a roadside bomb during an ambush by armed men near the border of Somalia. The attackers opened fire on the 14-seater vehicle after it ran over the explosive about eight kilometers from Mandera town on the Kenya-Somali frontier.  $\square$
- (U) Washington Calls for Release of U.S. Hostage in Afghanistan On 30 January, Washington called for the release of U.S. Navy veteran Mark Frerichs USPER, who was taken hostage in Afghanistan nearly two years ago. Frerichs, a civil engineer and contractor from Lombard, Illinois, was kidnapped in January 2020 from the capital of Kabul. He is believed to be in the custody of the Taliban-linked Haggani network.
- (U) More Than 100 Former Afghan Troops, Officials Killed Since Taliban Takeover The United Nations reportedly has received "credible allegations" that more than 100 former Afghan government officials, troops, and those who worked with coalition forces have been killed since the Taliban took control of the country in mid-August, despite assurances from the militant group that they would remain unharmed. Additionally, U.N. political mission has received credible allegations "of enforced disappearances and other violations impacting the right to life and physical integrity" of former government and coalition members. [viii]

### (U) Migration and Human Smuggling

(U//LES) Honduran National Police Detain Over 1,200 U.S.-Bound Cuban Nationals in a Week – During the period of 23 through 29 January, members of the Grupo de Operaciones Especiales Tacticas (GOET-Special Tactical Operations Group) of the PNH, working with INM inspectors, detained 1,258 U.S.-bound Cuban nationals. The Cuban migrants were primarily traveling on commercial buses destined for Tegucigalpa, Honduras. There were also several events in which the Cuban nationals were traveling in taxis or privately-owned conveyances. [viii]

(U//LES) Sinaloa Cartel Maritime Smuggling Cell TTPs – Intelligence indicates a husband-and-wife duo operate a smuggling cell comprised of approximately 15-20 members who assist in smuggling operations. The cell members work as boat operators, load drivers, and stash house caretakers. Reporting indicates they coordinate six smuggling events a week. To mitigate the risk of law enforcement interdicting the smuggling event, the maritime cell arranges for two vessels to meet at sea and transfer their illicit human cargo. Intelligence suggests the at sea transfers are conducted in open ocean, near the International Boundary. This is done to make it appear like the vessels are not entering/departing the United States. [ix]

(U//LES) Group of 187 Undocumented Migrants Apprehended in Normandy, Texas – On 29 January, Del Rio Sector Border Intelligence Center received a call from Maverick County Sheriff's Office (MCSO) regarding lost subjects in the Eagle Pass Station (EGT). EGT Border Patrol

Agents responded to the area and encountered a group of 187 subjects in Normandy, Texas. Further questioning revealed that all subjects were undocumented migrants (UDMs) and illegally present in the United States. All subjects were transported to the Eagle Pass Centralized Processing Center (EPCPC) for further processing. [X]

### (U) Narcotics/Weapons Trafficking/Illicit Money Movement

(U) Liquid Cocaine Found in Coconuts Destined for Europe – Colombian authorities reportedly discovered liquid cocaine hidden in nearly 20,000 coconuts after intercepting a shipment headed for Italy. Authorities said a container holding the shipment of coconuts was set to leave Cartagena, Colombia, and was bound for Genoa, Italy. Anti-narcotics personnel found and confiscated 504 bags containing 19,780 export-type coconuts. Inspection of the coconuts found the water in the fruit had been switched out with liquid cocaine. The Colombian authorities said they will continue to investigate where the coconuts were loaded in hopes of identifying those responsible and contact the Italian authorities to find out who was intended recipient. [xi]

(U//LES) Synopsis of Poppy Pods Smuggling – Two U.K citizens are using the U.S. Postal system to smuggle dried poppy pods from the U.K. to various international mail facilities in the United States, including JFK, MIA, SFO, New Orleans, and Dulles and using U.S. consignees as third-party vendors. Members of the Port of Miami Trade Tactical Programs (TTP) - Deep Dive Unit (DDU) collectively identified that all these shipments came from two sources, using the same location in the United Kingdom. Numerous shipments were intercepted by Customs and Border Protection Officers (CBPO's) at mail facilities at several ports across the country. Due to the lack of coordination and possible intelligence insight, some parcels are going unexamined. [Xiii]

(U) South America's Cocaine Traffickers Expanding in Southern Cone Countries – Ports in Chile, Argentina, and Uruguay have become prized turf for drug-trafficking criminal gangs for two main reasons. Containers shipped from Colombia, Ecuador, and Brazil are routinely searched for drugs at their ports of embarkation, but especially at their ports of destination creating the need for new dispatch points. The shipping routes from these Southern Cone ports bypass increasing interdiction efforts in the Caribbean and North Atlantic, thereby guaranteeing cocaine pipelines to the United States and Europe. [XIII]

(U) \$6 Million in Methamphetamine, Cocaine Seized in Texas – U.S. Customs and Border Protection (CBP) officers at the Brownsville Port of Entry intercepted alleged narcotics in two separate enforcement actions that have a combined estimated street value of \$6,127,806. The first seizure took place on 23 January, at the Los Indios International Bridge when a 19-year-old female U.S. citizen attempted to smuggle 19.88 pounds of alleged cocaine. The second seizure took place on 24 January, at the Veterans International Bridge when a 25-year-old male U.S. citizen attempted to smuggle 298.72 pounds of alleged methamphetamine. [xiv]

(U) Economic Security and Illicit Trade

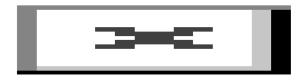
- (U) Oil Rises on Geopolitical Risks, Supply Shortage Oil rose on 31 January as a supply shortage and political tensions in Eastern Europe and the Middle East put prices on track for their biggest monthly gain in almost a year. UBS analyst Giovanni Staunovo said, "ongoing geopolitical tensions, more European countries planning to lift Covid related restrictions and renewed supply disruptions in Ecuador are supporting oil prices at the start of the week". [xv]
- (U) Washington to Host Qatar Ruler Amid Gas Concerns Tied to Russia-Ukraine Crisis Washington will host Qatar leader Sheik Tamin bin Hamad al-Thani, on 31 January for bilateral talks. Qatar is a gas-rich Middle Eastern country that could play a major role as a supplier if Russia were to disrupt European markets by sending military forces into Ukraine, a crisis that's concerned Western nations for months and was the focus of a United Nations Security Council meeting on 31 January. [xvi]
- (U) IMF Urges El Salvador To Scale Back Bitcoin Push On 28 January, the International Monetary Fund (IMF) stated El Salvador should dissolve the \$150 million trust fund it created when it made the cryptocurrency Bitcoin legal tender and return any unused funds to its treasury. The trust fund was intended to allow the automatic conversion of Bitcoin to U.S. dollars, El Salvador's other currency, to encourage people wary of adopting the highly volatile digital currency. The IMF expressed concern over El Salvador's growing exposure to Bitcoin's volatility and urged greater transparency. [xviii]

### (U) Special Interest

(U) The U.S. Begins Suspending Chinese Airline Flights – On 30 January, the U.S. will suspend 44 flights for four Chinese airlines, a policy that will reportedly remain in effect until 29 March. The action comes in response to similar suspensions from China. Beijing has reduced the total number of incoming international flights to just 200 per week—roughly 2 percent of prepandemic levels. These cancellations are partially attempts to fight against COVID-19 in the lead-up to the Beijing Winter Olympics. However, countries affected by the reduction are predominantly those that are at odds with Beijing in recent months. This includes Lithuania, who recognized Taiwan, and the United States, which is leading diplomatic boycotts of the Winter Games over Beijing's treatment of its Uyghur population. [XVIIII]

(U//FOUO) Colombia: 2022 Presidential Race Begins – On 29 January, the Colombian presidential elections began, consisting of 23 candidates. Most are competing within three major like-minded coalitions, spanning the left, center-left, and center-right. The winners of coalition primaries on 13 March will be the frontrunners for the 29 May first round presidential election. If no candidate exceeds 50 percent in the first round, the race continues to 19 June for a second-round run-off. Despite concerns over the potential for electoral violence, vote-buying, misinformation, and disinformation, as well as declining voter confidence in Colombia's institutions, analysts expect the election to be both free and fair. A separate cable will offer a primer on the congressional elections, which will take place 13 March. [xix]

### **NBSIW Product Feedback Form**



(U) Warning: The information contained herein remains under the control of the Department of Homeland Security (DHS), through U.S. Customs and Border Protection (CBP). It disseminated for authorized law enforcement purposes only. (U) This document contains information that is UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE (U//LES). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. § 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public, the media, or other personnel who do not have a valid need-to-know without prior approval of an authorized CBP official.

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III [France 24 | 31 January 2022 | (U) Russia and US Square off at UN Security Council over Ukraine Crisis | (U) | (U) |
https://www.france24.com/en/europe/20220131-un-security-council-to-meet-over-ukraine-as-us-senate-readies-new-
sanctions]
[Euobserver | 1 February 2022 | (U) US and Russia Clash in Ugly UN Talks | (U) | (U) |
https://euobserver.com/world/154251]
🕮 [Reuters | 30 January 2022 | (U) US Urges North Korea to Join Direct Talks After Missile Test | (U) | (U) |
https://www.reuters.com/world/asia-pacific/us-urges-north-korea-join-direct-talks-after-missile-test-2022-01-30/?rpc=401&]
🔟 [NPR | 31 January 2022 | (U) Protest against COVID mandates roils Ottawa despite officials' plea for it to end | (U) | (U) |
https://www.npr.org/2022/01/31/1076976698/ottawa-protests-covid-vaccine-mandates]
🔟 [Alarabiya News | 31 January | (U) Five Killed by Roadside Bomb in Northern Kenya | (U) | (U) |
https://english.alarabiya.net/News/world/2022/01/31/Five-killed-by-roadside-bomb-in-northern-Kenya-Police]
[M] [AP News | 30 January 2022 | Biden Calls for Release of US Hostage in Afghanistan | (U) | (U) |
https://apnews.com/article/afghanistan-joe-biden-veterans-kidnapping-kabul-c950097da26dd98c6b2d09d83d42af37]
🔟 [Fox News | 31 January 2022 | (U) More Than 100 Former Afghan Troops, Officials Killed Since Taliban Takeover | (U) | (U) |
https://www.foxnews.com/world/un-former-afghan-troops-officials-killed-taliban-takeover]
[CBP | IB-RGV-22-2435014 | 30 January 2022 | (U//LES) Honduran National Police Detain Over 1,200 United States-Bound
Cuban Nationals in a Week | (U//LES) | (U//LES)]
🔟 [CBP | FIR-SDC-22-2434583 | 30 January 2022 | (U//LES) Sinaloa Cartel Maritime Smuggling Cell TTPs | (U//LES) | (U//LES)]
🗵 [CBP | FIR-DRT-22-2434609 | 30 January 2022 | (U//LES) Group of 187 Undocumented Migrants Apprehended in Normandy,
Texas | (U)//LES) | (U//LES)]
[xii ] NBC | 30 January 2022 | (U) Liquid Cocaine Found in 20,000 Coconuts Being Shipped to Europe | (U) | (U) |
https://www.nbc15.com/2022/01/30/liquid-cocaine-found-20000-coconuts-being-shipped-europe/]
[CBP | FIR-MIA-22-2385998 | 30 January 2022 | (U//LES) Synopsis of Poppy Pods Smuggling | (U//LES) | (U//LES)
[WPR | 31 January 2022 | (U) South America's Cocaine Traffickers Are Heading South | (U) | (U) |
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https://www.worldpoliticsreview.com/articles/30285/south-america-drugs-smugglers-shift-to-the-southern-cone]

[kiv] [KTMS | 30 January 2022 | (U) \$6M in Methamphetamine, Cocaine Seized in Texas | (U) | (U) |

https://www.ktsm.com/news/6m-in-meth-cocaine-seized-in-texas/]

[Metro | 31 January 2022 | (U) Oil Rises on Geopolitical Risks, Supply Shortage | (U) | (U) | https://www.metro.us/oil-riseson-geopolitical/]

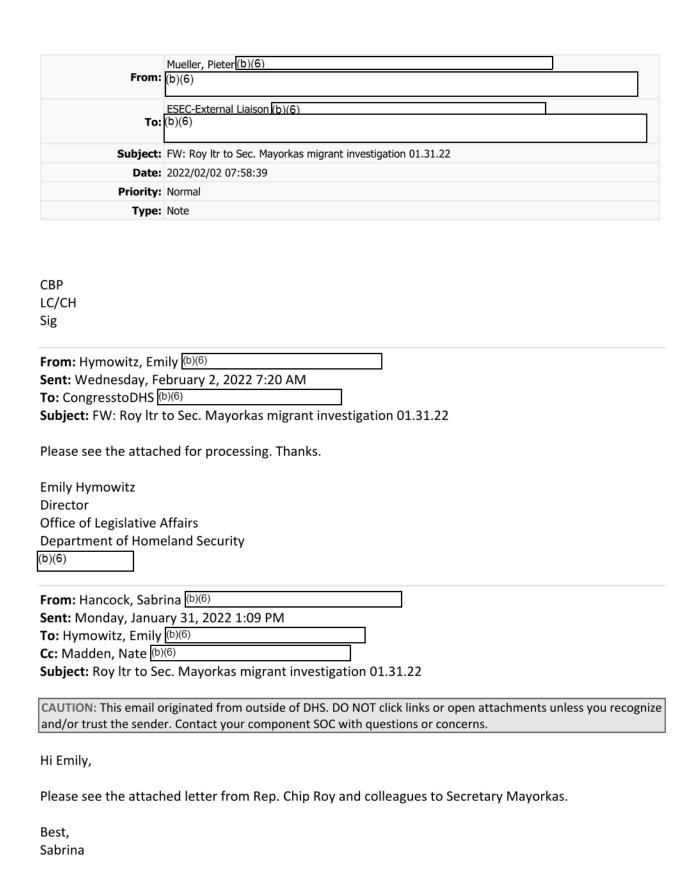
[WI] [UPI News | 31 January 2022 | (U) U.S. President to Host Qatar Ruler at White House Amid Gas Concerns Tied to Russia-Ukraine Crisis | (U) | (U) | https://www.upi.com/Top News/US/2022/01/31/joe-biden-gatar-emir-white-housetalks/1171643636707/?u3L=1]

[xvii] [Associated Press | 28 January 2022 | (UIMF urges El Salvador to scale back its Bitcoin push | (U) | (U) | https://apnews.com/article/cryptocurrency-technology-business-international-monetary-fund-bitcoina9e4d781b091ee1234e1dfeab8778c42]

[Foreign Brief | 30 January 2022 | (U) US Will Begin Suspending Chinese Airline Flights | (U) | (U) | https://www.foreignbrief.com/daily-news/us-will-begin-suspending-chinese-airline-flights/]

[CBP | Email 1429 | 31 January 2022 | (U//FOUO) 31 Jan 2022 DoS Political, Economic and COVID/EAC/Vaccine Cables from AOR HTML format| (U//FOUO) | (U//FOUO)]

Sender:	WATCH CBP INTEL (b)(6)	
Recipient:	WATCH CBP INTEL (b)(6) (b)(6)	
Sent Date:	2022/02/01 09:29:25	
Delivered Date:	2022/02/01 09:30:42	



### Sabrina Hancock

Legislative Director
Congressman Chip Roy [TX-21]
1005 Longworth House Office Building
(b)(6)



Twitter | Facebook | Website

Sender:	Mueller, Pieter (b)(6) (b)(6)	
Recipient:	ESEC-External Liaison (b)(6) (b)(6)	
Sent Date:	2022/02/02 07:56:54	
Delivered Date:	2022/02/02 07:58:39	

From:	
То:	Fauquet, Stephanie (b)(6) (b)(6)
cc:	Mueller, Pieter (b)(6) b)(6)  Sepehri, Reza (b)(6) (b)(6)
Subject:	Fwd: SIGNIFICANT CORRESPONDENCE REPORT: 2.2.22
Date:	2022/02/02 15:56:25
Priority:	Normal
Туре:	Note

Hi Stephanie - any chance we can redirect Gohmert to FRTF? They wrote the public comment notice he references.

Chad Gilmer		
Deputy Chief of Staff		
Office of Strategy, Policy, a	and Plans	
(O) (b)(6)		
(C)		
From: Clark, Nancy (b)(6)		
Sent: Wednesday, February 2	, 2022 3:50:10 PM	
<b>To:</b> Front Office Review CC (b)	(6)	
Cc: Fauquet, Stephanie (b)(6)	ESEC	C-External Liaison <esec-< td=""></esec-<>
(b)(6)	Clark, Nancy (b)(6)	Blackwell, Juliana
(b)(6)	OPE_Tasking (b)(6)	CARNES, ALEXANDRA
(b)(6)	WU, MIKE (b)(6)	SEYLER-SCHMIDT, GUSTAV
(b)(6)	BROOKS, REBECCA (t	p)(6) FALLON,
KATHLEEN (b)(6)	REZMOVIC, JEFFREY	(b)(6) ULLOA
ISABELLA (b)(6)	O'CONNOR, KIMBERLY (	b)(6)
BRAUN, JACOB (b)(6)	LUGO, ALICE (b)(6)	HIMMEL, CHLOE
(b)(6)	CALLAHAN, MARY ELLEN (b)(6)	Shenkle,
Abby (b)(6)	CANEGALLO, KRISTIE	(b)(6)
SEIDMAN, RICKI (b)(6)		

**Subject:** SIGNIFICANT CORRESPONDENCE REPORT: 2.2.22

Attached for your review is today's significant correspondence report. Based on our review and standard business practices, ESEC recommends tasking these letters to the below Components, with recommended signature level and priority. We ask that counselors provide any substantive guidance on letter assignment (in bullet format), response messaging, and letter priority. OLA and OPE should provide input on priority and signature levels if incorrect. We are asking for this input by 10 am tomorrow morning. If no response the letter will be tasked as reflected here.

Control Number	Date Received	То	From	Summary	Counselor	Tasked	Signature Level
1227463 22-0764	2.2.22	S1	Rep. Roy (TX) +6	Write asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th, 2021 incident in Del Rio, Texas.	Heather F. Immigration Team	СВР	Leadershi Clearance Compone Head
1227464 22-0741	2.2.22	S1	Danny Alicea Immigration and Nationality Law Committee	Writes to ask to promulgate new proposed regulations that account for the current reality of SIJS.	Immigration Team	USCIS	A/S OPE
1227465 22-0742	2.2.22	S1	Rep. Wasserman- Schultz (FL)	Writes requesting to close the Glades County Detention Center in Moore Haven, Florida.	Immigration Team	ICE	Leadershi Clearance Compone Head
1227466 22-0743	2.2.22	S1	Rep. Rice (NY)	Writes regarding the purchase and use of telecommunications equipment and devices from companies that have ties to the Chinese military	Tim M.	CISA	Leadershi Clearance Compone Head
1227482 22-0765	2.2.22	S1	Rep. Gohmert (TX) +19	Write regarding DHS's request for public comment regarding family separations at the border.	Immigration Team	PLCY	A/S OLA

		1227480 22-0753	2.2.22	S1	Wade Henderson (President &CE0 - The Leadership Conference on Civil and Human Rights)	Writes regarding allegations made towards CBP officers for their treatment of Haitians at the border.	Immigration Team	СВР	A/S OPI
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Please submit any guidance to ESEC-External, Stephanie Fauquet, and Juliana Blackwell, all are copied on this e-mail.

### **Definitions of Priority:**

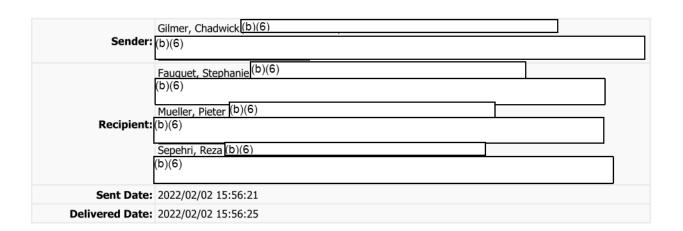
Urgent/High: 14 Business Days to Final Routine: 30 Business Days to Final

Is Interim Necessary (YES/NO)? 1 Business Day.

Regards,

Nancy Clark
Office of the Executive Secretary
Office of the Secretary
U.S. Department of Homeland Security
Desk:(b)(6)
Cell(b)(6)

"ESEC: Excellent Service, Endless Commitment"



	VANGALDER, ANNIKA (b)(6)
From:	(b)(6)
	ESEC-External Liaison (b)(6)
To:	(b)(6)
Subject:	FW: SIGNIFICANT CORRESPONDENCE REPORT: 2.2.22
Date:	2022/02/02 16:00:22
Priority:	Normal
Туре:	Note

### Packaging!

From: Clark, Nancy (b)(6)		
Sent: Wednesday, February 2	, 2022 3:50 PM	
To: Front Office Review CC (b)	(6)	
Cc: Fauquet, Stephanie (b)(6)	ESEC-	External Liaison <esec-< td=""></esec-<>
(b)(6)	Clark, Nancy (b)(6)	Blackwell, Juliana
(b)(6)	OPE_Tasking (b)(6)	CARNES, ALEXANDRA
(b)(6)	WU, MIKE (b)(6)	SEYLER-SCHMIDT, GUSTAV
(b)(6)	BROOKS, REBECCA (b)	6) FALLON,
KATHLEEN (b)(6)	REZMOVIC, JEFFREY (b	)(6) ULLOA,
ISABELLA (b)(6)	O'CONNOR, KIMBERLY (b)	(6)
BRAUN, JACOB (b)(6)	LUGO, ALICE (b)(6)	HIMMEL, CHLOE
(b)(6)	CALLAHAN, MARY ELLEN (b)(6)	Shenkle,
Abby (b)(6)	CANEGALLO, KRISTIE	b)(6)
SEIDMAN, RICKI (b)(6)		
• • • • • • • • • • • • • • • • • • • •		

**Subject:** SIGNIFICANT CORRESPONDENCE REPORT: 2.2.22

Attached for your review is today's significant correspondence report. Based on our review and standard business practices, ESEC recommends tasking these letters to the below Components, with recommended signature level and priority. We ask that counselors provide any substantive guidance on letter assignment (in bullet format), response messaging, and letter priority. OLA and OPE should provide input on priority and signature levels if incorrect. We are asking for this input by 10 am tomorrow morning. If no response the letter will be tasked as reflected here.

Control Number	Date Received	То	From	Summary	Counselor	Tasked	Signature Level
1227463 22-0764	2.2.22	S1	Rep. Roy (TX) +6	Write asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th,	Heather F. Immigration Team	СВР	Leadersh Clearance Compone Head

				2021 incident in Del Rio, Texas.			
1227464 22-0741	2.2.22	S1	Danny Alicea Immigration and Nationality Law Committee	Writes to ask to promulgate new proposed regulations that account for the current reality of SIJS.	Immigration Team	USCIS	A/S OPE
1227465 22-0742	2.2.22	S1	Rep. Wasserman- Schultz (FL)	Writes requesting to close the Glades County Detention Center in Moore Haven, Florida.	Immigration Team	ICE	Leadershi Clearance Compone Head
1227466 22-0743	2.2.22	S1	Rep. Rice (NY)	Writes regarding the purchase and use of telecommunications equipment and devices from companies that have ties to the Chinese military	Tim M.	CISA	Leadershi Clearance Compone Head
1227482 22-0765	2.2.22	S1	Rep. Gohmert (TX) +19	Write regarding DHS's request for public comment regarding family separations at the border.	Immigration Team	PLCY	A/S OLA
1227480 22-0753	2.2.22	S1	Wade Henderson (President &CE0 - The Leadership Conference on Civil and Human Rights)	Writes regarding allegations made towards CBP officers for their treatment of Haitians at the border.	Immigration Team	СВР	A/S OPE

Please submit any guidance to ESEC-External, Stephanie Fauquet, and Juliana Blackwell, all are copied on this e-mail.

### **Definitions of Priority:**

Urgent/High: 14 Business Days to Final Routine: 30 Business Days to Final

Is Interim Necessary (YES/NO)? 1 Business Day.

Regards,

Nancy Clark
Office of the Executive Secretary
Office of the Secretary
U.S. Department of Homeland Security
Desk: (b)(6)
Cell:(b)(6)

"ESEC: Excellent Service, Endless Commitment"

Sender:	VANGALDER, ANNIKA (b)(6) (b)(6)	1	
Recipient:	ESEC-External Liaison (b)(6) (b)(6)		
Sent Date:	2022/02/02 16:00:19		
Delivered Date:	2022/02/02 16:00:22		

## **Significant Correspondence Report**



2.2.22

Control Number	Date Received	То	From	Summary	Counselor	Tasked	Signature Level	Priority Level	Priority Due Date	Secretary Notes
1227463 22-0764	2.2.22	S1	Rep. Roy (TX) +6	Write asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th, 2021 incident in Del Rio, Texas.	Heather F. Immigration Team	СВР	Leadership Clearance / Component Head	High	2.25.22	
1227464 22-0741	2.2.22	SI	Danny Alicea Immigration and Nationality Law Committee	Writes to ask to promulgate new proposed regulations that account for the current reality of SIJS.	Immigration Team	USCIS	A/S OPE	High	2.25.22	
1227465 22-0742	2.2.22	S1	Rep. Wasserman-Schultz (FL) +14	Writes requesting to close the Glades County Detention Center in Moore Haven, Florida.	Immigration Team	ICE	Leadership Clearance / Component Head	High	2.25.22	
1227466 22-0743	2.2.22	S1	Rep. Rice (NY)	Writes regarding the purchase and use of telecommunications equipment and devices from companies that have ties to the Chinese military	Tim M.	CISA	Leadership Clearance / Component Head	High	2.25.22	
1227482 22-0765	2.2.22	S1	Rep. Gohmert (TX) +19	Write regarding DHS's request for public comment regarding family separations at the border.	Immigration Team	PLCY	A/S OLA	High	2.25.22	
1227480 22-0753	2.2.22	SI	Wade Henderson (President & CEO - The Leadership Conference on Civil and Human Rights)	Writes regarding allegations made towards CBP officers for their treatment of Haitians at the border.	Immigration Team	СВР	A/S OPE	High	2.25.22	

### Congress of the United States Washington, DC 20515

January 31, 2022

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

RECEIVED

By ESEC at 9:13 am, Feb 02, 2022

Dear Secretary Mayorkas,

It has been more than four months since senior members of the Biden Administration, including President Biden and Press Secretary, Jen Psaki participated in a widely spread falsehood and accused United States Border Patrol agents of "whipping" Haitian migrants attempting to illegally cross into the United States near Del Rio, Texas on September 19, 2021.<sup>1</sup>

As has been well documented, the "whipping" narrative was based on a photograph that first went viral on social media.<sup>2</sup> While this narrative was later debunked by the photographer of the photo himself<sup>3</sup>, the widespread narrative of whipping based on a demonstratable lie — especially by members of this administration — demands that the public record be finalized by publicly disclosing the "investigative work" conducted by Custom and Border Protections' (CBP) Office of Professional Responsibility (OPR).<sup>4</sup>

For four months, the Biden Administration and your Department have gone without even apologizing to the agents that were smeared. To make matters worse, reports now indicate that the investigational report DHS was conducting on the incident will likely never appear. According to reports, one DHS official speaking under the condition of anonymity, said they "doubt the current administration will release this report on the horse patrol incident because it makes the administration look terrible." The same official went on to add that "they essentially convicted the mounted agents based upon a lie, which the investigation after 120 days would surely have revealed," and, noting that no agent has been disciplined thus far, "My experience would be that this would have been done within a period of weeks."

Therefore, we ask that your Department immediately publicly disclose the findings of the "investigative work" done by CBP's OPR on the September 19<sup>th</sup>, 2021, incident in Del Rio, Texas. The American people deserve transparency from their government, and the United States Border Patrol deserves defense from their Department's Secretary against unfounded accusations.

Sincerely,

Chip Roy Member of Congress Brian Babin, D.D.S Member of Congress

<sup>&</sup>lt;sup>1</sup> https://nypost.com/2021/09/24/biden-says-border-agents-on-horses-will-pay-for-treatment-of-haitians/ https://www.nbcnews.com/politics/white-house/white-house-says-images-border-patrol-whip-obviously-horrific-n1279663 https://www.axios.com/del-rio-haitian-migrants-border-patrol-harris-mayorkas-20c67b97-4650-4ffe-96a0-8ac3c19f03d4.html

https://thefederalist.com/2021/09/21/democrats-spread-border-patrol-whip-lie-while-failing-to-address-growing-border-crisis/

<sup>&</sup>lt;sup>3</sup> https://www.newsweek.com/photographer-who-captured-migrant-photos-says-agents-didnt-use-whips-anyone-1632590

<sup>4</sup> https://www.dhs.gov/news/2021/11/16/dhs-update-regarding-investigation-horse-patrol-activity-del-rio-texas-september-19

<sup>&</sup>lt;sup>5</sup> https://www.washingtonexaminer.com/policy/report-on-texas-horse-patrol-incident-may-never-materialize

And Briggs

Andy Biggs Member of Congress

mary & Miller

Mary E. Miller Member of Congress

Darrell Issa

Member of Congress

Matterfless

Scott Perry Member of Congress

Michael Cloud Member of Congress

# RECEIVED By ESEC at 9:43 am, Feb 02, 2022



# COMMITTEE ON IMMIGRATION & NATIONALITY LAW

DANNY ALICEA CHAIR dalicea@cfrny.org

# COMMITTEE ON CHILDREN & THE LAW

MELISSA J. FRIEDMAN CO-CHAIR mjfriedm@gmail.com

RACHEL STANTON
CO-CHAIR
rachel.j.stanton@gmail.com

February 1, 2022

Hon. Alejandro Mayorkas Secretary Department of Homeland Security 1880 2nd Street SW Washington, DC 20024 Ms. Ur M. Jaddou Director U.S. Citizenship and Immigration Services Department of Homeland Security 5900 Capital Gateway Drive Camp Springs, Maryland 20588

Mr. Tae D. Johnson Acting Director Immigration and Customs Enforcement Department of Homeland Security 500 12th Street SW Washington, D.C. 20536

Re: Reforms Needed to Safeguard Vulnerable Youth Applying for Special Immigrant Juvenile Status (SIJS)

Dear Secretary Mayorkas, Director Jaddou, and Acting Director Johnson:

The New York City Bar Association, through its Immigration and Nationality Law Committee and Children and the Law Committee, calls upon your Administration to adopt reforms to safeguard vulnerable youth applying for Special Immigrant Juvenile Status (SIJS) from deportation and to provide them with Employment Authorization Documents (EADs) while their cases are pending. Doing so would help protect these youth—who are survivors of parental abuse,

#### About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

abandonment, neglect, and similar circumstances and thousands of whom are residents of New York City—from further harm including wage theft, trafficking, and deportation, and uphold the purpose of Special Immigrant Juvenile Status.

As this Administration is aware, in 1990 Congress established SIJS to provide permanent humanitarian protection in the United States to immigrant children under the age of 21 found by state courts to have survived parental abuse, abandonment, neglect, or similar circumstances, and whose best interests would not be served by return to their countries of origin. Eligible children can apply for SIJS with the United States Citizenship and Immigration Service (USCIS) once a state court has issued an order making these requisite findings. In the case of SIJS-eligible children in New York, typically a Family Court judge issues these findings after conducting a hearing. Many of these children are in the custody of the New York City Administration for Children's Services and in foster care.

Youth with an approved SIJS petition can seek Lawful Permanent Residence and later pursue U.S. citizenship. However, while SIJS is a form of humanitarian protection, the Immigration and Nationality Act places SIJS, along with other special immigrant categories, in an employment-based visa category which subjects SIJS youth to worldwide and per-country annual visa caps. With only a small portion of the annual visa supply available to these youth, the result is a years-long backlog currently impacting youth from El Salvador, Guatemala, Honduras, and Mexico.<sup>2</sup> This legislative framework prohibits many SIJS youth from applying for Lawful Permanent Residence for years, leaving them in legal limbo during a pivotal time in their young lives and exposing them to many of the harms that SIJS was enacted to shield them from. It also disparately impacts youth from the countries where the greatest need for SIJS-based visas arises, as youth from all other countries can apply for SIJS concurrently with their Lawful Permanent Residence and Employment Authorization (EAD) applications.

The creation of SIJS reflects Congress's recognition of the need to ensure the safety and well-being of eligible young people, and it is incumbent upon this Administration to ensure that Congressional intent and the protective purpose of SIJS are upheld. The young people who apply for SIJS are survivors of domestic violence, sexual assault, child labor, exploitation, and other grave harms, but that is not the entirety of their identities. These young people are inspiring and contributing members of the greater New York and U.S. communities. Their dreams and lives are undermined by starkly limited visa availability, the resulting inability to work lawfully, and vulnerability to deportation. While the limited visa supply that in large part creates these harms can be remedied only by Congressional action, there is much that can be done without legislative change to ameliorate the associated harms.

<sup>&</sup>lt;sup>1</sup> Immigration and Nationality Act (INA) § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

<sup>&</sup>lt;sup>2</sup> 8 U.S.C. § 1151(d); § 1153(b)(4); *see also* Rachel Leya Davidson & Laila L Hlass, "Any Day They Could Deport Me," Nov. 2021,

 $<sup>\</sup>frac{https://static1.squarespace.com/static/5fe8d735a897d33f7e7054cd/t/61a7bceb18795020f6712eff/1638382830688/Anny+Day+They+Could+Deport+Me-10010f-100$ 

<sup>+</sup>Over+44%2C000+Immigrant+Children+Trapped+in+the+SIJS+Backlog+%28FULL+REPORT%29.pdf (hereinafter "Any Day" Report)(all websites last visited Feb. 1, 2022).

Congress's intent behind creating SIJS is undermined by USCIS's current EAD policy and the Department of Homeland Security's (DHS) lack of formal final administrative directives to ensure that SIJS youth are not deported.

#### THE NEED TO ENSURE ACCESS TO WORK AUTHORIZATION FOR SIJS YOUTH

Under USCIS's current EAD policy, SIJS youth cannot apply for EADs unless and until they have a pending application for Lawful Permanent Residence.<sup>3</sup> As of April 2021, based on USCIS's own data, more than 44,000 SIJS petitioners from El Salvador, Guatemala, Honduras, and Mexico are prevented from applying for Lawful Permanent Residence because of the statutory visa limits described above.<sup>4</sup> Accordingly, USCIS's current EAD policy prohibits the same youth trapped in this SIJS visa backlog from accessing employment authorization. USCIS has already approved the SIJS petitions for many of these youth, yet USCIS's EAD policy forces them into a years-long limbo, unable to work, access financial aid for college, or find the permanency and stability that SIJS is designed to provide for them.<sup>5</sup>

The current EAD policy has many unintended and pernicious consequences. Many SIJS youth reaching their later teens hope to acquire life skills, progress toward independence, and contribute to their own financial needs by accepting employment—out of reach under the current EAD policy. As a result, SIJS youth, including those with dependent children, may face food and housing insecurity. Youth in foster care may struggle as they approach the end of their time in care without the ability to work to support themselves and without access to vital benefits to transition to independent adulthood, which may result in burdening city foster care agencies with their continued care. Without work authorization, SIJS youth are at risk of exploitation and trafficking; they may be forced to work in unsafe conditions and face discrimination.

They also are left without state identification, as an EAD is not only work authorization, but also one of the few forms of government-issued identification available to youth who lack permanent immigration status. As such, an EAD is the gateway to many forms of benefits and services including driver's licenses, social security numbers, and access to bank accounts.

Youth without EADs also may be unable to access higher education programs. Many SIJS youth dream of college or other vocational training. Without Lawful Permanent Residence, they are barred from accessing federal financial aid. This, coupled with an inability to work lawfully and lack of the ID needed to apply for other forms of financial aid, excludes many SIJS youth from pursuing higher education.<sup>6</sup>

<sup>&</sup>lt;sup>3</sup> 8 CFR § 274a.12(c)(9).

<sup>&</sup>lt;sup>4</sup> "Any Day" Report at 11.

<sup>&</sup>lt;sup>5</sup> Ibid.

<sup>&</sup>lt;sup>6</sup> See Kids in Need of Defense, "Left in Limbo: Why Special Immigrant Juveniles Need Employment Authorization," Jan. 2022, available at <a href="https://supportkind.org/resources/left-in-limbo-why-special-immigrant-juveniles-need-employment-authorization/">https://supportkind.org/resources/left-in-limbo-why-special-immigrant-juveniles-need-employment-authorization/</a> (hereinafter "Left in Limbo" Report); "Any Day" Report at 18; and Dalia Castillo-Granados, The Center for Public Interest Law/Commission on Immigration, American Bar Association, "A Long Wait for Special Immigrant Juveniles Means a Risk of Deportation," Feb. 23, 2021,

The ongoing lack of access to work authorization places SIJS youth at risk and runs contrary to Congress's intent in creating the SIJS program. USCIS has *full authority* under the law to adopt reforms that would help end these harms by providing automatic EADs for SIJS petitioners without need for the filing of a separate application either upon SIJS approval or within 180 days of filing a SIJS petition, whichever date is earlier, that are necessary for their safety and well-being. We urge the Biden Administration to move forward to protect SIJS youth as soon as possible.

### THE NEED TO PROTECT SIJS YOUTH FROM REMOVAL

The ongoing threat of removal places SIJS youth at risk and runs contrary to Congress's intent in creating the SIJS program. DHS has the power to prohibit the removal, and threat thereof, of SIJS youth. It is incumbent upon this administration to take action to address and ameliorate this harm.

In recent years, DHS and the Executive office for Immigration Review have pursued the removal of SIJS youth for lack of visa availability. This is true despite DHS having approved them for SIJS and agreeing with the state court's determination that it is not in their best interests to be returned to the countries where they faced abuse, neglect, abandonment or other harms. We commend DHS leadership for taking preliminary steps to protect vulnerable populations, including the May 27, 2021 Interim Guidance to the Office of the Principal Legal Advisor (OPLA) Attorneys and the August 10, 2021 ICE Directive on Using a Victim-Centered Approach with Noncitizen Crime Victims. We were particularly heartened to see that those policies include explicit protections for SIJS-eligible youth. That said, we urge DHS to employ further administrative tools to protect SIJS youth from deportation and thereby help fulfill the purpose of SIJS. The implementation of the above guidance has not been systematic in New York's immigration courts, and the protection of SIJS youth without visa availability requires a more explicit and final directive from DHS.

The Administration should promulgate regulations that prohibit the removal of SIJS petitioners and beneficiaries who are awaiting visa availability. In the meantime, we urge you to immediately direct OPLA attorneys to take the following actions in cases of SIJS youth:

 Join motions to dismiss or terminate cases where the respondent has a pending or approved SIJS petition, regardless of the petition's priority date;

https://www.americanbar.org/groups/public\_interest/immigration/generating\_justice\_blog/a-long-wait-for-special-immigrant-juveniles-means-a-risk-of-depo/ (hereinafter "A Long Wait" Report).

<sup>&</sup>lt;sup>7</sup> See "Left in Limbo" Report; "Any Day" Report; and "A Long Wait" Report.

<sup>8 8</sup> U.S.C. § 1103(a); 8 U.S.C. § 1324a(h)(3).

<sup>&</sup>lt;sup>9</sup> See "Left in Limbo" Report; "Any Day" Report; and "A Long Wait" Report.

<sup>10 8</sup> U.S.C. § 1103.

- Join motions to reopen cases of individuals with orders of removal who have a pending or approved SIJS petition, regardless of the petition's priority date; and
- Facilitate adjustment of status for those SIJS beneficiaries with current priority dates
  who wish to pursue adjustment in court, by, where appropriate, joining motions to
  adjudicate without a hearing or to advance individual adjustment of status hearings or
  stipulating to adjustment of status relief.

## IMPACTS OF USCIS AND DHS SIJS POLICY ON NEW YORK CITY AND NEW YORK STATE

According to data from a USCIS Freedom of Information Act request, Greater New York City has over 3,000 immigrant youth trapped in the SIJS backlog residing in our community, the largest concentration of impacted youth in any city in the country. And 7,695 immigrant youth trapped in the SIJS Backlog call New York State home. New York State, with eighteen percent of the total number of impacted youth in the country, has the highest number of immigrant children and youth trapped in the SIJS backlog of any state. That so many young people impacted by the SIJS backlog live in our city and state and remain vulnerable to exploitation, trafficking and deportation to the very countries our state family courts have determined are not in their best interests to return to is of serious concern to the New York City Bar Association. These youth are integral members of our communities: they have families here, go to our city public schools, play soccer in our youth leagues, are in the custody of our city's children's services agency, and are under the jurisdiction of our family courts. Many of them, lacking employment authorization, work in New York City's unregulated labor economy in order to survive. USCIS and DHS have the power to extend protection to these youth, as Congress intended.

Without meaningful action from the Biden Administration, not only will New York City have to grapple with the possible removal of thousands of valued community members, it will also continue to have to absorb the costs of extended foster care for children in the SIJS backlog. Moreover, DHS action could alleviate our city's backlogged immigration courts by terminating thousands of removal cases against young people with pending and approved SIJS applications, allowing Immigration and Customs Enforcement to focus its resources on those who pose an actual threat to the United States.

### **CONCLUSION**

The New York City Bar Association previously called for reform to the SIJS regulations, commenting on the proposed regulations.<sup>14</sup> While we stand by our comments to those proposed regulations, what was proposed by the government in those regulations was drafted in 2011 before

<sup>&</sup>lt;sup>11</sup> FOIA PRODUCTION COW2021—1524 (U.S. Citizenship and Immigr. Serv. CD-ROM, Sept. 2021).

<sup>&</sup>lt;sup>12</sup> "Any Day" Report at page 31.

<sup>13</sup> Ibid.

<sup>&</sup>lt;sup>14</sup> *See* <a href="https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/opposition-to-dhs-proposed-rule-regarding-special-immigrant-juvenile-petitions-comments.">https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/opposition-to-dhs-proposed-rule-regarding-special-immigrant-juvenile-petitions-comments.</a>

the SIJS visa backlog was a reality and therefore does not contemplate the impacts of the lack of visa availability on immigrant youth. It is clear from USCIS's own data that the impacts of the SIJS backlog are vast.

This administration should promulgate new proposed regulations that account for the current reality of SIJS, including creating EAD eligibility for SIJS and codifying the protections from removal for SIJS youth described above, and allow for a robust comment period. In the meantime, we urge you to *immediately* extend automatic eligibility for EADs to all SIJS petitioners, regardless of visa availability, and to enact formal administrative protections from deportation to uphold the intent of SIJS and ensure stability and permanency for vulnerable SIJS petitioners living in New York and across the country.

Respectfully,

Danny Alicea, Chair Immigration and Nationality Law Committee

Melissa J. Friedman, Co-Chair Children and the Law Committee

Rachel Stanton, Co-Chair Children and the Law Committee

Cc: Ambassador Susan E. Rice, Director, White House Domestic Policy Council Hon. Nancy Pelosi, Speaker, U.S. House of Representatives Hon. Chuck Schumer, Majority Leader, U.S. Senate

Hon. Dick Durbin, Chair, U.S. Senate Judiciary Committee

Hon. Jerrold Nadler, Chair, U.S. House of Representatives Judiciary Committee

Members New York State Congressional Delegation

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NATIONAL SECURITY

STEERING AND POLICY COMMITTEE

# Congress of the United States House of Representatives Mashington, DC 20515

February 1, 2022

The Honorable Alejandro Mayorkas Secretary U.S. Department of Homeland Security (DHS) 2707 Martin Luther King Jr Ave SE Washington, DC 20528

RECEIVED

By ESEC at 9:43 am, Feb 02, 2022

Dear Secretary Mayorkas:

We write once again to request that you move expeditiously to close the Glades County Detention Center in Moore Haven, Florida. Glades operates as a migrant detention center under contract with Immigration and Customs Enforcement (ICE). Many of us wrote to you this past summer requesting the contract be terminated and that no individuals be transferred to or from the facility. Reports of abuse of both local residents detained and those transferred in from across the country have unfortunately escalated since that time. We understand the facility's contract is up for renewal in March 2022. The situation is not improving and we respectfully urge the Department to immediately terminate its contract with Glades County and close this facility.

We remain extremely concerned about the reports coming out of Glades and understand a group of advocacy organizations sent your department a memorandum<sup>2</sup> (memo) specifically on racist abuse at the facility last month. The memo outlines a systemic pattern of racially based abuse, documented via independent complaints to several lawyers and organizations. The treatment of Black immigrants at Glades includes but is not limited to disproportionate: veiled death threats and threats of physical violence, use of pepper spray, solitary confinement, extreme forms of physical violence like using the restraint chair, off-camera physical assault, and punitive, arbitrary administrative sanctions. Black immigrants at Glades are also subject to anti-immigrant verbal abuse that is often tied to their nationality. These events are unacceptable and have continued at an alarming rate under this Administration.

 $\underline{https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/60f9b4f9ada0083784a9c028/1626977529997/\underline{Glades+County+Detention+Letter+Signed.pdf}$ 

https://www.aclufl.org/sites/default/files/field\_documents/memo\_to\_dhs\_re\_racism\_at\_glades\_detention\_center\_11. 18.21.pdf

<sup>&</sup>lt;sup>1</sup> See

<sup>&</sup>lt;sup>2</sup> See

Further, we have been apprised of reports on the overuse of toxic chemicals<sup>3</sup> and a recent carbon monoxide leak<sup>4</sup> in the facility, both of which resulted in individuals in the facility needing urgent medical care. On November 23, 2021, a carbon monoxide buildup in the kitchen at Glades due to staff negligence resulted in the poisoning of nine people who were working in the kitchen: six detained individuals and three Glades staff members. Of these, four detained men and one female Glades staff member were hospitalized. The other two detained individuals and two Glades staff members who were exposed to the gas experienced symptoms of carbon monoxide poisoning, including headaches, dizziness, and shortness of breath, but were not taken to the hospital that day. Weeks after the carbon monoxide poisoning occurred, many of the affected individuals report continuing to experience symptoms of the poisoning and have received little to no medical treatment for these ongoing medical issues.

As a result of these tragic events, other federal oversight bodies have been notified about the conditions at Glades and have even reached out to advocacy organizations in Florida for further information. Pertaining to the carbon monoxide leak, a letter<sup>5</sup> was recently sent to DHS leadership and ICE officials, the Occupational Health and Safety Administration (OSHA), and relevant State and local entities. The letter details how the leak violated both 2019 National Detention Standards for Non-dedicated Facilities ("NDS") and OSHA regulations.

Complaints related to a breadth of other hostile conditions, such as sexual harassment and abuse, retaliation for peaceful protest, and patterns of COVID endangerment and medical abuse have also continued at the facility, in addition to the reports of racist abuse, toxic chemicals, and the carbon monoxide leak. This is demonstrated by the over 35 complaints filed related to Glades since the onset of the pandemic, with at least 15 filed under this Administration.

These reports are highly disturbing and completely unacceptable. Further, as noted previously Glades should be closed for the sake of good governance and responsible stewardship of taxpayer dollars. The detention center is not operationally necessary. ICE has guaranteed Glades County payment for 300 beds, yet the current population is around 30. No one should be treated this way, especially under your watch and at the taxpayer's expense. People's lives continue to be in danger every minute that the Glades Detention Center remains open.

We respectfully urge you to terminate your contract with Glades County immediately. Thank you for your attention to this important matter.

Sincerely,

Debbie Wasserman Schult Member of Congress

<sup>&</sup>lt;sup>3</sup>See <a href="https://www.scientificamerican.com/article/immigrants-in-u-s-detention-exposed-to-hazardous-disinfectants-every-day/">https://www.scientificamerican.com/article/immigrants-in-u-s-detention-exposed-to-hazardous-disinfectants-every-day/</a>

<sup>&</sup>lt;sup>4</sup> See <a href="https://www.miaminewtimes.com/news/glades-county-detention-center-carbon-monoxide-exposure-13425720">https://www.miaminewtimes.com/news/glades-county-detention-center-carbon-monoxide-exposure-13425720</a>

<sup>&</sup>lt;sup>5</sup> See <a href="https://www.aclufl.org/sites/default/files/field-documents/carbon monoxide-poisoning-glades-dec-2021.pdf">https://www.aclufl.org/sites/default/files/field-documents/carbon monoxide-poisoning-glades-dec-2021.pdf</a>

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Member of Congress

Charlie Crist
Member of Congress

Ted Deutch
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Grace Meng

Barren Soto

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### KATHLEEN M. RICE 4TH DISTRICT, NEW YORK

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### Congress of the United States House of Representatives

Washington, DC 20515-3204

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SUBCOMMITTEE: CYBERSECURITY, INFRASTRUCTURE PROTECTION, AND INNOVATION

RECEIVED

By ESEC at 10:01 am, Feb 02, 2022

February 1, 2022

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

Dear Secretary Mayorkas and Director Easterly:

The Honorable Jen Easterly
Director
Cybersecurity and Infrastructure Security Agency
Washington, DC 20023

Protecting our information and communications technology ("ICT") infrastructure and supply chain, as well as our ICT research and development capacity, from attack by foreign actors is of utmost importance to the national security of the United States. I thank you for your commitment to building resilient technology infrastructure and supply chains and addressing the systemic risks that threaten them.

There is ample evidence that the purchase and use of telecommunications equipment and devices from companies that have ties to the Chinese military, or that engage in unfair practices supported by Chinese government programs and policies, pose a risk to the security of the telecommunications infrastructure and supply chain of the United States. This risk was highlighted in the July 26, 2019 report of the Inspector General of the Department of Defense (DOD) on the Audit of DOD's Management of the Cybersecurity Risks for Government Purchase Card Purchases of Commercial off-the-Shelf items. That report found that DOD had purchased and used commercial off-the-shelf ("COTS") information technology items that had known cybersecurity risks, including computers and hand-held devices from Chinese companies, and that such failure was a result of DOD not having developed a strategy and acquisition policy to manage cybersecurity risks from COTS procurement of information technology items.

Similarly, there are well documented reports that Chinese telecommunications device manufacturers engage in systemic hold-out practices – refusing to pay fair and reasonable royalties for the use of patented standards essential technologies help by American companies, while also using and profiting from those technologies. In essence, these practices divert dollars away from American patent holders that could be used to support future research and development investments in cutting-edge wireless technologies and instead empower Chinese mobile device companies. As a result, Chinese companies dominate 5G technologies and 5G infrastructure products and are poised to dominate future generations of wireless communications standards.

The Department of Homeland Security (DHS) and the Cybersecurity and Infrastructure Security Agency (CISA) are members of the Federal Acquisition Security Council (FASC) and have been designated as the FASC information sharing agency. In that role, DHS and CISA should collect and disseminate information and support efforts by the Supply Chain Risk Management Task Force to evaluate threats to, and vulnerabilities in, information and communications technology, services, and research and development capabilities essential to the proper functioning of government information systems.

An important step in fulfilling that duty would be to conduct a follow up study to the 2019 DOD Audit report to determine whether civilian agency procurement, including by state governments, of COTS IT items, particularly from Chinese laptop and mobile device manufacturers, may pose cybersecurity risks for telecommunications infrastructure. As found by the 2019 DOD Audit report, the use of COTS items without first identifying, assessing, and mitigating known vulnerabilities with those items can compromise missions critical to national security. Similarly, the DOD report concluded that the interconnectivity of COTS information technology devices creates additional opportunities for federal adversaries to exploit cybersecurity vulnerabilities to compromise national security. These vulnerabilities may equally exist for federal and state civilian agency procurement of COTS IT items.

I also ask DHS and CISA to take action to address the threat to the research and development infrastructure of the United States from Chinese telecommunications device producers that engage in unfair practices in the U.S. market, including systematically refusing to pay appropriate royalties for the use of standard essential patented wireless technologies developed domestically. In that regard, I would like to hear your views on whether additional legal authorities are necessary for DHS to be able to counter these threats, including by stopping products at the border from Chinese companies that refuse to enter into license agreements and pay fair and reasonable royalties for the continued infringement of standard essential patented wireless telecommunications technologies.

Finally, I would like to know how DHS, CISA, and FASC are working to support the states to ensure that they are not unwittingly procuring products that will create vulnerabilities at the state level. Do any federal agencies coordinate and share risk information with the National Association of State Procurement Officials to ensure that they are aware of the risks of the COTS IT items mentioned in the 2019 DOD report? Are states still procuring products that the federal government has already determined to pose a risk?

It is crucial that the Biden administration pursue a consistent and aggressive policy to respond to these threats to the national security of the United States. Once again, I thank you for your efforts to protect the United States from these threats, and I look forward to your response.

Sincerely,

Kathleen M. Rice Member of Congress

### Congress of the United States Washington, DC 20515

January 25, 2022

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

RECEIVED

By ESEC at 3:15 pm, Feb 02, 2022

Dear Secretary Mayorkas,

On December 9, 2021, the Department of Homeland Security (DHS) announced its request for public comment on how the U.S. Government can prevent family separations at the U.S. border. In a brazen display that can only be described as misleading virtue signaling, the Department further clarified that it was seeking public recommendations "on how to permanently protect against the prior administration's practice of intentionally separating families at the border to deter others from migrating to the United States."

It is beyond insulting for an executive agency, charged with the duty of securing the homeland, to feign ignorance of the systemic issues at hand and solicit solutions from the American people who continue to suffer daily on account of your willful failure to do what is required by law and necessary to both protect our citizens and minimize separations that occur due to the Biden Administration's intentional failure to secure our nation's southern border.

The answer to this problem you pose to the public is, as you know well, quite simple: secure the border. If the solution is quite simple—and it certainly is—then what *is* the problem? The problem is that we have an executive branch full of individuals who have no interest in securing the border, as evident from overt omissions. Now, DHS, under your leadership, has taken its negligence a step further to deflect its responsibilities onto the public. This is, quite simply, disgraceful.

As many of us have pointed out in prior letters and interactions, often receiving no actual answers to our inquiries at all, border crossings remain unsustainably high. As you are well aware by now, attempted crossings at the U.S.-Mexico border remain at historically high levels not experienced in at least decades. Just this past November, there were 173,620 encounters

<sup>&</sup>lt;sup>1</sup> U.S. Department of Homeland Security, *DHS to Request Public Input on How the U.S. Government Can Prevent Family Separations at the U.S. Border*, (Dec. 9, 2021), available at https://www.dhs.gov/news/2021/12/09/dhs-request-public-input-how-us-government-can-prevent-family-separations-us-border (accessed Dec. 17, 2021).

along the Southwest border, a 5% increase from just the month prior.<sup>3</sup> Of the individuals involved in these encounters, Customs and Border Patrol (CBP) reports that 25% have had at least one prior encounter in the previous 12 months, compared to an average one-year reencounter rate of 13% for FY2014-2019.<sup>4</sup>

Why historically high levels of illegal crossings that have continued since Joe Biden was sworn in as President of the United States? Why now? Could it be that the posture of this administration has signaled to the world that illegal entry will not only be tolerated but even welcome? In fact, we believe DHS communicates this very open-door posture in the relevant announcement when it alleges that the separation of children at the border was done intentionally by the prior administration "to deter migration." This unfounded accusation is completely lacking merit, as a rudimentary historical analysis demonstrates. That said, since the migration referred to is undisputedly overwhelmingly illegal, the strong implication that DHS gives is that it does not wish to deter such (illegal) migration. Put another way, DHS under your leadership is inviting foreigners to break the duly elected laws that the people of this nation, through their elected representatives, rightly determined. It is the people through the legislatures they elect that have the authority under the U.S. Constitution to create laws—not you and not the President of the United States.

To continue to perpetuate the mistruth that separations at the border began with President Trump and his administration is an affront to the facts, which we can only assume you are acquainted with, occupying the high position that you do. Crossing the border illegally is a crime. When President Trump decided to enforce the laws, as he was sworn to do, he was doing his duty. As is the case when adult citizens of the United States break the laws of our nation, the resulting consequence is very often family separation. Nobody celebrates this reality, and yet few would put the bulk of the blame for such separation on those who enforce the law, but rather on those who willfully break the law and, in doing, often leave their children without one or both parents, at least for a time. By aligning yourself in word and deed against the enforcement of the law as a matter of policy, you are aligning yourself against the interests of the American people. Should you need this basic reality clarified, we would be happy to brief you.

We issue these comments on behalf of ourselves and so many of our constituents who we hear from continually on the issue of our open southern border. The feedback we receive from our constituents is overwhelmingly not about what President Trump allegedly did to separate

<sup>&</sup>lt;sup>3</sup> U.S. Customs and Border Protection, *CBP Releases November 2021 Monthly Operational Update*, (Dec. 17, 2021), *available at* https://www.cbp.gov/newsroom/national-media-release/cbp-releases-november-2021-monthly-operational-update (accessed Dec. 17, 2021).

<sup>&</sup>lt;sup>5</sup> U.S. Department of Homeland Security, *DHS to Request Public Input on How the U.S. Government Can Prevent Family Separations at the U.S. Border*, (Dec. 9, 2021), available at https://www.dhs.gov/news/2021/12/09/dhs-request-public-input-how-us-government-can-prevent-family-separations-us-border (accessed Dec. 17, 2021).

families. It is about what you and the Biden Administration are not doing to secure our southern border, and thereby allowing this humanitarian crisis to fester in our own nation and those of our neighbors. Like these constituents and so many in our nation, we remain deeply concerned about this unlawful, manmade humanitarian and national crisis that is being facilitated on our southern border. Our concern is informed not only by such alarming data, as reported by media outlets including The Washington Post and CNN, but also the observations made by many Members of Congress while at the border. Many Members of Congress have attested that there is a huge influx of women and children. These increased levels do not merely suggest more illegal crossings, but greatly increased related criminality, including human and drug trafficking and smuggling.

Regarding the human cost, which includes children trafficked by criminals posing as a parent or guardian, the cumulative suffering inflicted on these individuals will never be completely ascertained due to the clandestine nature of the cartels, gangs, traffickers and smugglers. Once on U.S. soil, and despite the dedication of our CBP officers and state officials, these illegal aliens are often subjected to "poor conditions," as CNN reports. We are quite simply not prepared to handle such an extreme increase in illegal entries into our nation that should be thwarted rather than encouraged. It is also difficult to quantify the enormous impacts to our citizens in border states who continue to suffer property damage and loss, as well as threats to their own safety and that of their families and neighbors.

Yet again, we reiterate that members of the executive branch have a duty and many have sworn an oath that would include the requirement to carry out the lawfully enacted legislation under the Constitution. With an open border facilitating illegal entry into our nation and the manifold resulting criminalities, the executive branch is failing miserably in its duty. Rather than own up to your failure and reverse course, you seem to have adopted another questionable approach: impose your failure onto the public you are charged with serving by giving them the responsibility of answering a question for which the answer is already evident.

Here's our comment summarized: if you are serious about not separating families at the border, you will be as serious about securing our southern border. If you continue to willfully and intentionally fail to do the latter, we will understand your claim to care about families at the border as what it appears to be on its face, shameless posturing and egregious blame shifting onto the public you are charged with serving.

Sincerely,

Louie Gohmert

United States Representative

Marjorie Taylor Greene Member of Congress Laure BX

Lauren Boebert Member of Congress

Bill Posey

Bill Posey Member of Congress

Debbie Lesko Member of Congress

Jody Hice Member of Congress

Lody Afice

Andy Biggs Member of Congress

Dan Bishop Member of Congress

Wan Bishop

Ronny Jackson Member of Congress mary & Miller

Mary E. Miller Member of Congress

Thomas P Liff Tom P. Tiffany

Member of Congress

Ranky X. Wiln

Randy K. Weber

Member of Congress

**Bob Good** 

Member of Congress

Dob Low

Lance Gooden

Member of Congress

Lance Hooden

W. Gregory Steube

Member of Congress

Michael Cloud

Member of Congress

Glenn Thompson

Member of Congress

Clay Higgins
Member of Con

Member of Congress

Chan Hym

Kody Dais

Rodney Davis Member of Congress

Brian Babin, D.D.S. Member of Congress

1620 L Street, NW Suite 1100 Washington, DC 20036

The Leadership Conference

on Civil and Human Rights

202.466.3311 voice 202.466.3435 fax www.civilrights.org

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Judith L. Lichtman
National Partnership for
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Human Rights Campaign Marc Morial National Urban League Janet Murguía UnidosUS

Christian F. Nunes National Organization for Women Rabbi Jonah Pesner Religious Action Center

of Reform Judaism Rebecca Pringle National Education Association Lisa Rice

National Fair Housing Alliance Anthony Romero American Civil Liberties Union

American Civil Liber Liz Shuler AFL-CIO Fawn Sharp

National Congress of American Indians Maria Town

American Association of People with Disabilities Randi Weingarten

American Federation of Teachers John C. Yang Asian Americans Advancing Justice |

Interim President and CEO Wade Henderson

AAJC

February 1st, 2022

The Honorable Alejandro N. Mayorkas Secretary of Homeland Security U.S. Department of Homeland Security 2707 Martin Luther King Jr. Avenue, SE Washington, DC 20528

RECEIVED

By ESEC at 2:28 pm, Feb 02, 2022

Dear Secretary Mayorkas,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 230 national organizations, I write requesting an update and greater transparency into the investigation of the Customs and Border Patrol (CBP) agents on the U.S. border for their discriminatory treatment of Haitians seeking asylum, and to urge you to adopt more humane policies for Haitians fleeing significant harm and persecution.

On September 23, 2021, I and other civil rights leaders met with you; Susan Rice, Director, Domestic Policy Council; and Cedric Richmond, Senior Advisor and Director, Office of Public Engagement, regarding our concerns about the treatment of Haitian asylum-seekers. On September 24, 2021, the Leadership Conference sent a sign-on letter to the President voicing our concerns about discriminatory U.S. policies towards Haitian migrants and urging the administration to exercise prosecutorial discretion by ordering a temporary pause on the removal of Haitians who have arrived in the United States, as well as to end the use of Title 42 expulsions which circumvent U.S. asylum protections. We understand that the removal of Haitians has continued, with more almost 150 deportation flights to Haiti having taken off since September 2021.

While we welcome the November 2021 update and the Office of Professional Responsibility investigation into employee misconduct, we have yet to receive any information on why the OIG declined to investigate and have seen no changes to CBP policies and actions to prevent this from happening again. We would like to understand why the DHS OIG declined to investigate such misconduct. While we recognize certain information may not be divulged public to both ensure the integrity of the investigation and the privacy rights of the CBP employees under investigation, we also believe that the public has a right to be kept informed of this investigation throughout the process.

Furthermore, regardless of the outcome of these specific allegations given the historic and systemic unjust treatment of Haitians, we urge you to break the cycle of discriminatory U.S.

February 1<sup>st</sup>, 2022 Page 2 of 2



policies and laws and end the inhumane treatment (including Title 42 expulsions), of Haitian asylum seekers at our southern border. In May, your administration acknowledged the dangers of Haitians returning to Haiti by the granting of Temporary Protective Status (TPS). Since that time, the political and economic conditions in Haiti have significantly deteriorated with the assassination of President Jovenel Moïse and the earthquake in August that killed more than 2,200 people. The U.S. government has long history of discriminatory U.S. policies and laws against Haitian asylum seekers and migrants and this unfair treatment must stop.

We look forward to your re	sponse. If you have any questions, please contact Rob Randhava, Senio
Counsel, at (b)(6)	and Breanne Palmer, Immigration Policy Counsel, at
(b)(6)	
· · · · · · · · · · · · · · · · · · ·	

Sincerely,

Wade Henderson

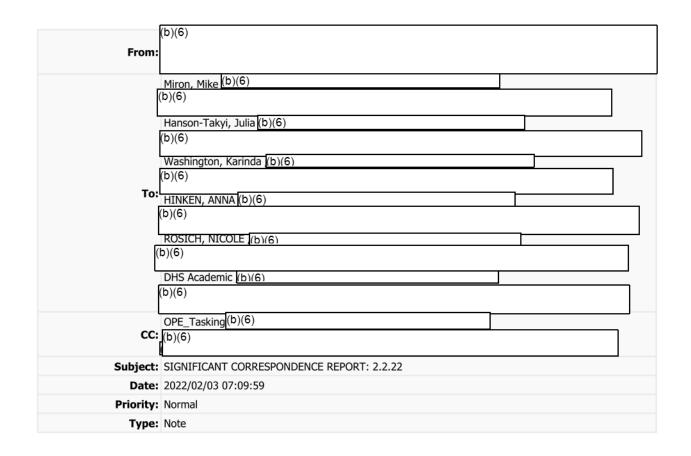
Wat Hale

Interim President and CEO

The Leadership Conference on Civil and Human Rights

CC:

Susan Rice, Director, Domestic Policy Council Cedric Richmond, Senior Advisor and Director, Office of Public Engagement



Good morning CMO, OAE and SI, and FI-NGO,

This is a friendly reminder that a response is due by 9:30 am, today.

Best,

(b)(6)

Jr. Analyst

Contractor- Immersion Consulting, LLC

Office of Partnership and Engagement

U.S. Department of Homeland Security
(b)(6)

M: (b)(6)

From (b)(6) Sent: Wednesday, February 2, 2022 3:53 PM To: LAWRENCE, JAMIE (b)(6) YEE, BRITTON (b)(6) FONG, HEATHER (b)(6) Wollenhaupt, Charles L (b)(6)Miron, Mike (b)(6) MAYER, JASON (b)(6); Bynum, Brandi(b)(6) Hyer, Brian (b)(6)Barry, Jonathan (b)(6) ; Hanson-Takyi, Julia (b)(6) Washington, Karinda (b)(6) HINKEN,

ANNA (b)(6)	CONOVER, GARRET (b)(6)	ROSICH, NICOLE
(b)(6)	Johnson, Kim R (b)(6)	, SILVA, COLLEEN
(b)(6)	IORIO, JOHN (b)(6)	DHS Academic
(b)(6)	ENRIQUEZ, MIRIAM (b)(6)	Marking, Susanna
(b)(6)	Sims, Lori (b)(6)	
Cc: OPE_Tasking(b)(6)		
Subject: SIGNIFICANT COF	RRESPONDENCE REPORT: 2.2.22	

Good afternoon All,

Please see the attached ESEC Significant Correspondence Report for correspondence received by the Department in the prior 24 hours. ESEC request your review and comment on any letter that your office has an interest in due to a related stakeholder communication, upcoming outreach/OPE engagement, or an S1 engagement/meeting event – specifically in regard to the following:

- 1. Proposed signatory recommendation
- 2. Priority due dates(s) recommendation
- 3. Component lead recommendation

Please return your recommendations to OPE\_Tasking by 9:30AM tomorrow morning.

Please note: Negative response	onses are required.		
Best,			
(b)(6)			
Jr. Analyst			
CTR-Vision Centric, Inc.			
Office of Partnership and E	ngagement		
Office for State and Local I	0 0		
U.S. Department of Homela			
(b)(6)			
From: Clark, Nancy (b)(6)			
Sent: Wednesday, February 2	, 2022 3:50 PM		
To: Front Office Review CC (b)	(6)		
Cc: Fauquet, Stephanie (b)(6)		ESEC-External Liaison	
(b)(6)	Clark, Nancy (b)(6)		ll, Juliana
(b)(6)	OPE_Tasking (b)(6)		ARNES, ALEXANDRA
(b)(6)	WU, MIKE (b)(6)		HMIDT, GUSTAV
(b)(6)	BROOKS, REBE		FALLON,
(h)(6)	REZMOVIC, JEF		ULLOA,
ISABELLA (b)(6)	O'CONNOR, KIMBI		;
BRAUN, JACOB (b)(6)	LUGO, ALICE <sup>(</sup>	, , , , , , , , , , , , , , , , , , ,	HIMMEL, CHLOE

(b)(6)	CALLAHAN, MARY ELLEN (b)(6)	Shenkle,
Abby (b)(6)	CANEGALLO, KRISTIE <sup>(b)(6)</sup>	j;
SEIDMAN, RICKI (b)(6)		

**Subject:** SIGNIFICANT CORRESPONDENCE REPORT: 2.2.22

Attached for your review is today's significant correspondence report. Based on our review and standard business practices, ESEC recommends tasking these letters to the below Components, with recommended signature level and priority. We ask that counselors provide any substantive guidance on letter assignment (in bullet format), response messaging, and letter priority. OLA and OPE should provide input on priority and signature levels if incorrect. We are asking for this input by 10 am tomorrow morning. If no response the letter will be tasked as reflected here.

Control Number	Date Received	То	From	Summary	Counselor	Tasked	Signature Level
1227463 22-0764	2.2.22	S1	Rep. Roy (TX) +6	Write asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th, 2021 incident in Del Rio, Texas.	Heather F. Immigration Team	СВР	Leadersh Clearance Compone Head
1227464 22-0741	2.2.22	S1	Danny Alicea Immigration and Nationality Law Committee	Writes to ask to promulgate new proposed regulations that account for the current reality of SIJS.	Immigration Team	USCIS	A/S OPE
1227465 22-0742	2.2.22	S1	Rep. Wasserman- Schultz (FL)	Writes requesting to close the Glades County Detention Center in Moore Haven, Florida.	Immigration Team	ICE	Leadersh Clearance Compone Head
1227466 22-0743	2.2.22	S1	Rep. Rice (NY)	Writes regarding the purchase and use of telecommunications equipment and devices from companies that have ties to the Chinese military	Tim M.	CISA	Leadersh Clearance Compone Head

1227482 22-0765	2.2.22	S1	Rep. Gohmert (TX) +19	Write regarding DHS's request for public comment regarding family separations at the border.	Immigration Team	PLCY	A/S OLA
1227480 22-0753	2.2.22	S1	Wade Henderson (President &CE0 - The Leadership Conference on Civil and Human Rights)	Writes regarding allegations made towards CBP officers for their treatment of Haitians at the border.	Immigration Team	СВР	A/S OPE

Please submit any guidance to ESEC-External, Stephanie Fauquet, and Juliana Blackwell, all are copied on this e-mail.

#### **Definitions of Priority:**

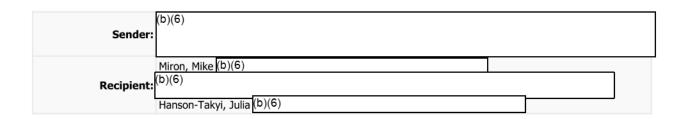
Urgent/High: 14 Business Days to Final Routine: 30 Business Days to Final

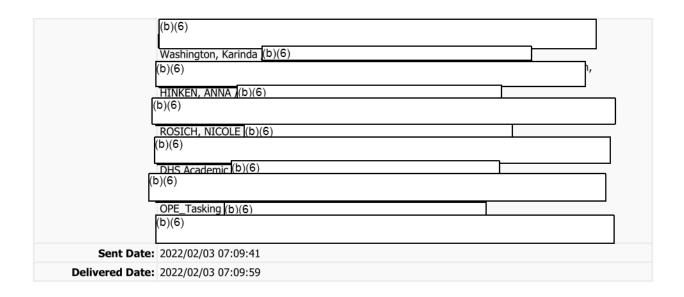
Is Interim Necessary (YES/NO)? 1 Business Day.

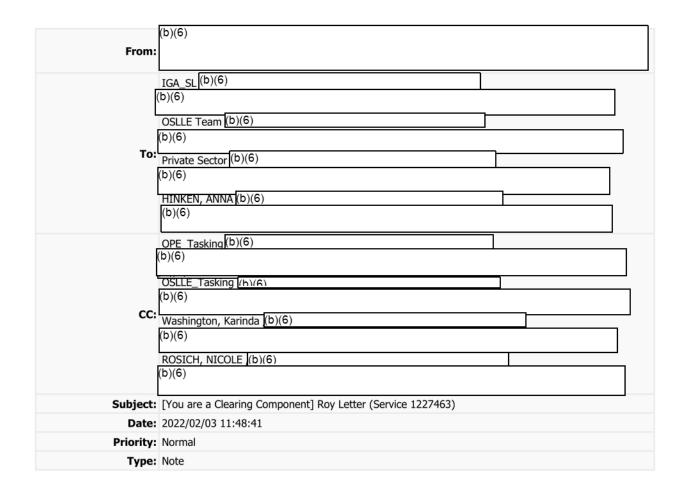
Regards,

Nancy Clark
Office of the Executive Secretary
Office of the Secretary
U.S. Department of Homeland Security
Desk: (b)(6)
Cell: (b)(6)
(b)(6)

"ESEC: Excellent Service, Endless Commitment"







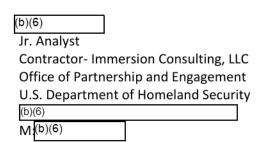
Good morning IGA, OSLLE, PSO and Anna,

Please see the attached incoming in which CBP has the lead for a response.

Please let OPE\_Tasking know if you have comments, concerns, or issues that should be incorporated into the draft response within 24 hours.

OPE\_Tasking will distribute the draft response letter upon receipt.

Best,



From: ANNIKA VAN GALDER (b)(6)

Sent: Thursday, February 3, 2022 9:54 AM

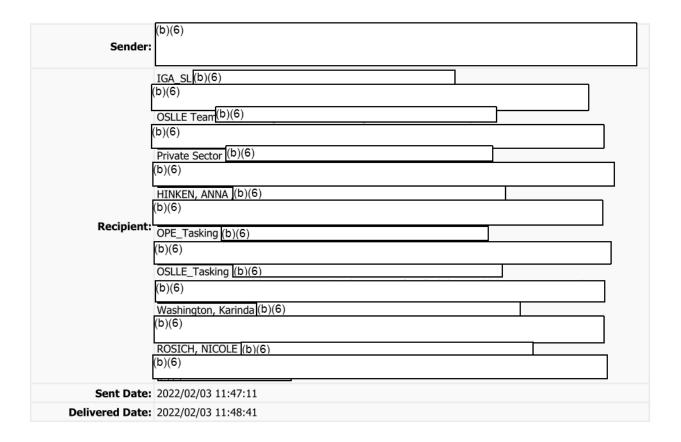
To (b)(6)

Subject: You are a Clearing Component (Service 1227463) (Intranet Quorum IMA008257301)

MGMT / OLA / PLCY / OGC / PRIV / CRCL / OPS / OPA / OPE: CBP has the lead to prepare a draft in response to the attached incoming. Please share this incoming with your leadership. If your leadership has any comments, concerns, or issues that should be incorporated into the draft response, please share them with the drafting component within 24 hours so that the issues can be addressed prior to submitting the draft to ESEC.

Contact: The Honorable Chip Roy

https://IQ.dhs.gov/iq/UX/serviceitem.aspx?id=1227463&iAccount=IQ



## Congress of the United States Washington, DC 20515

January 31, 2022

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

RECEIVED
By ESEC at 9:13 am, Feb 02, 2022

Dear Secretary Mayorkas,

It has been more than four months since senior members of the Biden Administration, including President Biden and Press Secretary, Jen Psaki participated in a widely spread falsehood and accused United States Border Patrol agents of "whipping" Haitian migrants attempting to illegally cross into the United States near Del Rio, Texas on September 19, 2021.<sup>1</sup>

As has been well documented, the "whipping" narrative was based on a photograph that first went viral on social media.<sup>2</sup> While this narrative was later debunked by the photographer of the photo himself<sup>3</sup>, the widespread narrative of whipping based on a demonstratable lie — especially by members of this administration — demands that the public record be finalized by publicly disclosing the "investigative work" conducted by Custom and Border Protections' (CBP) Office of Professional Responsibility (OPR).<sup>4</sup>

For four months, the Biden Administration and your Department have gone without even apologizing to the agents that were smeared. To make matters worse, reports now indicate that the investigational report DHS was conducting on the incident will likely never appear. According to reports, one DHS official speaking under the condition of anonymity, said they "doubt the current administration will release this report on the horse patrol incident because it makes the administration look terrible." The same official went on to add that "they essentially convicted the mounted agents based upon a lie, which the investigation after 120 days would surely have revealed," and, noting that no agent has been disciplined thus far, "My experience would be that this would have been done within a period of weeks."

Therefore, we ask that your Department immediately publicly disclose the findings of the "investigative work" done by CBP's OPR on the September 19<sup>th</sup>, 2021, incident in Del Rio, Texas. The American people deserve transparency from their government, and the United States Border Patrol deserves defense from their Department's Secretary against unfounded accusations.

Sincerely,

Chip Roy Member of Congress Brian Babin, D.D.S Member of Congress

<sup>&</sup>lt;sup>1</sup> https://nypost.com/2021/09/24/biden-says-border-agents-on-horses-will-pay-for-treatment-of-haitians/ https://www.nbcnews.com/politics/white-house/white-house-says-images-border-patrol-whip-obviously-horrific-n1279663 https://www.axios.com/del-rio-haitian-migrants-border-patrol-harris-mayorkas-20c67b97-4650-4ffe-96a0-8ac3c19f03d4.html

<sup>&</sup>lt;sup>2</sup> https://thefederalist.com/2021/09/21/democrats-spread-border-patrol-whip-lie-while-failing-to-address-growing-border-crisis/

https://www.newsweek.com/photographer-who-captured-migrant-photos-says-agents-didnt-use-whips-anyone-1632590

 $<sup>^4 \</sup>underline{\text{https://www.dhs.gov/news/2021/11/16/dhs-update-regarding-investigation-horse-patrol-activity-del-rio-texas-september-19} \\$ 

<sup>&</sup>lt;sup>5</sup> https://www.washingtonexaminer.com/policy/report-on-texas-horse-patrol-incident-may-never-materialize

And Briggs

Andy Biggs Member of Congress

mary & Miller

Mary E. Miller Member of Congress

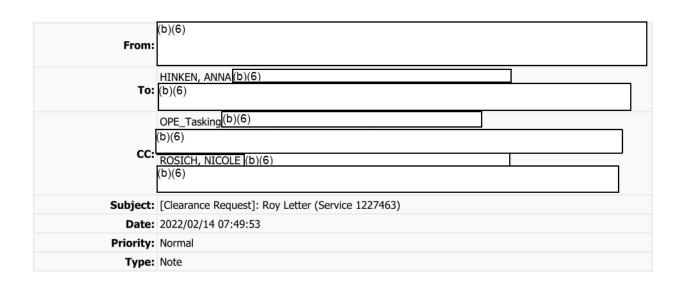
Darrell Issa

Member of Congress

Mathematical

Scott Perry Member of Congress

Michael Cloud Member of Congress



Good morning,

This is a friendly reminder to provide input soonest.

Best,

Jr. Analyst
CTR-Vision Centric, Inc.
Office of Partnership and Engagement

U.S. Department of Homeland Security

Office for State and Local Law Enforcement

(b)(6) (b)(6)

From: (b)(6)

Sent: Friday, February 11, 2022 7:07 AM

To: HINKEN, ANNA (b)(6)

Cc: ROSICH, NICOLE (b)(6)

OPE Tasking (b)(6)

Subject: [Clearance Request]: Roy Letter (Service 1227463)

Good morning,

This is a friendly reminder a response is requested by 12pm, today.

Best,

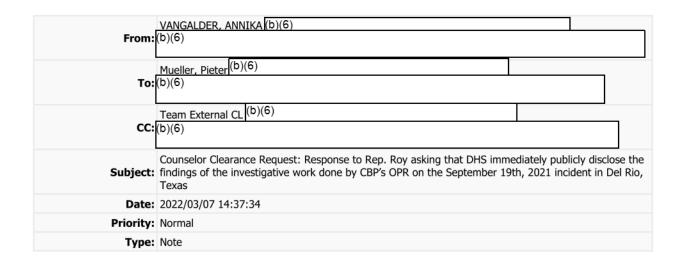
(b)(6)

Jr. Analyst

Contractor-Immersion Consulting, LLC.

Office of Partnership and Engagement (OPE)				
U.S Department of Homeland Security				
(b)(6)				
(b)(6)				
From: (b)(6)				
Sent: Wednesday, February 9, 2022 5:26 PM				
To: IGA_SL (b)(6) OSLLE Team (b)(6) Private Sector				
(b)(6) HINKEN, ANNA (b)(6)				
Cc: OPE_Tasking (b)(6) ROSICH, NICOLE (b)(6) Silas, Traci				
(b)(6) OSLLE_Tasking (b)(6)				
Subject: [Clearance Request]: Roy Letter (Service 1227463)				
Subject: [Clearance Request]: Roy Letter (Service 1227463)				
Condistrance All				
Good afternoon All,				
Discourse to the first to the CDD for				
Please see the attached package drafted by CBP for your review.				
OPE Tasking asks that you provide any input by Friday, February 11, 2021 at 12pm.				
D				
Best,				
(b)(6)				
Jr. Analyst				
Contractor- Immersion Consulting, LLC				
Office of Partnership and Engagement				
U.S. Department of Homeland Security				
(b)(6)				
M: (b)(6)				
From: ZAHEERAH BROWN (b)(6)				
Sent: Wednesday, February 9, 2022 5:00 PM				
To: (b)(6)				
Subject: WF#1227463 Clearance Request (Service 1227463) (Intranet Quorum IMA008267888)				
Subject: Wi #1227403 Clearance Request (Service 1227403) (Intranet Quorum INIA008207888)				
Good evening,				
dood evening,				
Diagram and another draft recovery and respirite very group and by 2/11/2022				
Please review the draft response and provide your response by 2/11/2022.				
Contact: The Honorable Chip Roy				
https://IQ.dhs.gov/iq/UX/serviceitem.aspx?id=1227463&iAccount=IQ				
(h)(c)				
(b)(6)				
Sender:				
Recipient: HINKEN, ANNA (b)(6)				

	(b)(6)  OPE_Tasking (b)(6)  (b)(6)  ROSICH, NICOLE (b)(6)  (b)(6)	
Į (		
Sent Date:	2022/02/14 07:48:05	
Delivered Date:	2022/02/14 07:49:53	



Good afternoon Sheila, Angie, and Sam,

Please find attached for your review the incoming letter and draft response to Rep. Roy asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th, 2021 incident in Del Rio, Texas.

This response was drafted by CBP for Commissioner Magnus' signature and has been cleared by the following Components:

- PRIV/COS Taylor 2/10/22
- • CRCL/DO Mina 2/10/22
- • OPS/DCOS Driscoll 2/10/22
- • OPA/DAS Bernstein 2/10/22
- • MGMT/DCOS Clayton 2/11/22
- • OGC/DCOS McCleary 2/11/22
- PLCY/DCOS Gilmer 2/11/22
- OLA/COS Himmel 2/16/22

Please advise of your clearance or anything we may assist with.

• • Deadline/Time sensitivities: Clearance requested by 3/9

• Draft Received by ESEC: 3/7
• Signature Level: CBP Signature
• Next Step: Send to DCOS/COS

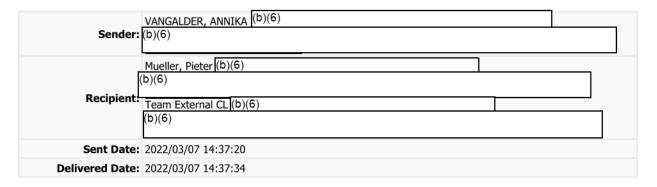
Thanks, Pieter

Pieter Mueller External Team Lead Office of the Executive Secretary

#### U.S. Department of Homeland Security

Cell:(b)(6)	
(b)(6)	

#### 1227463 / 22-0764



The Honorable Chip Roy U.S. House of Representatives Washington, DC 20515

Dear Representative Roy:

Thank you for your January 31, 2022 letter to the Department of Homeland Security (DHS) regarding allegations of misconduct by U.S. Customs and Border Protection (CBP) U.S. Border Patrol agents. Secretary Mayorkas asked that I respond on his behalf, and I apologize for the delay in responding.

CBP takes allegations of employee misconduct very seriously. CBP initially referred the investigation to DHS's Office of Inspector General, who declined to investigate and referred the matter back to CBP's Office of Professional Responsibility (OPR). OPR immediately initiated an investigation and has followed customary processes in its review of this matter.

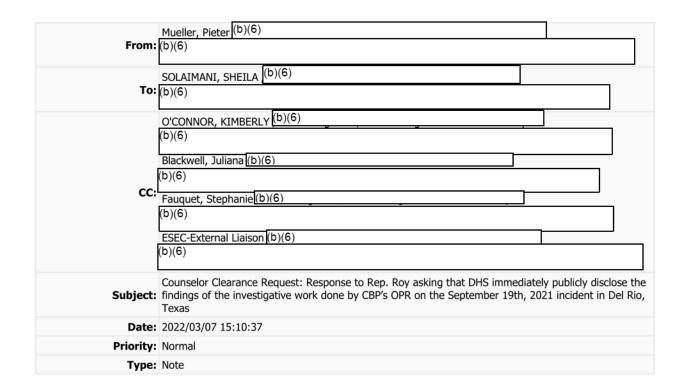
Once completed, the results of the investigation will be provided to CBP leadership to determine whether disciplinary action is appropriate and, if so, the specific action to be imposed. At that time, the employees will be afforded due process, including an opportunity to respond, and any corrective actions will comport with applicable laws and regulations. The disciplinary process, which is separate from the fact-finding investigation, is subject to certain timelines established in CBP's labor-management agreement with the employees' union of the U.S. Border Patrol.

CBP remains committed to conducting a thorough, independent, and objective investigation, and will share information, as available, consistent with the need to protect the integrity of the investigation and individuals' privacy. Upon completion, CBP is willing to brief you on the findings of this investigation.

Thank you again for your letter and interest in this important matter. The cosigners of your letter will receive a separate, identical response. Should you need additional assistance, please do not hesitate to have a member of your staff contact Patrick Schmidt, Acting Deputy Assistant Commissioner, CBP Office of Congressional Affairs at 202-344-1760.

Sincerely,

Chris Magnus Commissioner



#### Good afternoon Sheila,

Please find attached for your review the incoming letter and draft response to Rep. Roy asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th, 2021 incident in Del Rio, Texas.

This response was drafted by CBP for Commissioner Magnus' signature and has been cleared by the following Components:

- PRIV/COS Taylor 2/10/22
- • CRCL/DO Mina 2/10/22
- • OPS/DCOS Driscoll 2/10/22
- OPA/DAS Bernstein 2/10/22
- • MGMT/DCOS Clayton 2/11/22
- • OGC/DCOS McCleary 2/11/22
- PLCY/DCOS Gilmer 2/11/22
- • OLA/COS Himmel 2/16/22

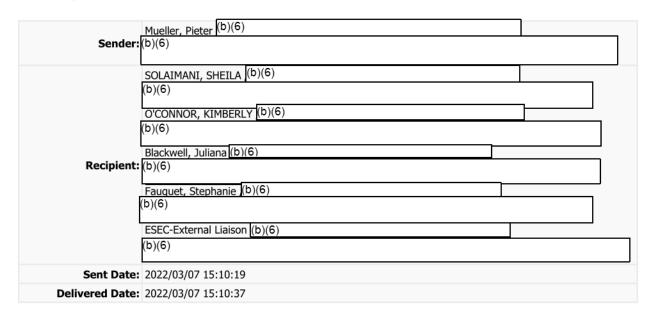
Please advise of your clearance or anything we may assist with.

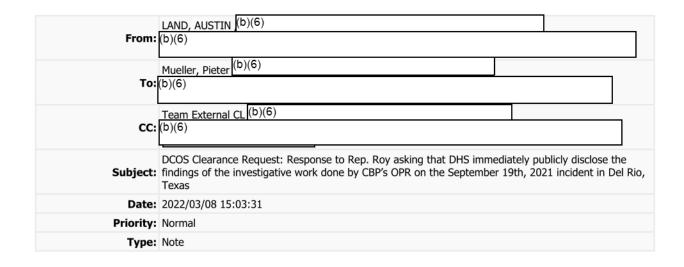
- Deadline/Time sensitivities: Clearance requested by 3/9
- • Draft Received by ESEC: 3/7
- • Signature Level: CBP Signature
- Next Step: Send to DCOS/COS

Thanks, Pieter

Pieter Mueller
External Team Lead
Office of the Executive Secretary
U.S. <u>Department of Homeland Security</u>
Cell (b)(6)

#### 1227463 / 22-0764





#### Good afternoon,

Please find attached for your review the incoming letter and draft response to Rep. Roy asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th, 2021 incident in Del Rio, Texas.

This response was drafted by CBP for Commissioner Magnus' signature and has been cleared by the following Components:

- PRIV/COS Taylor 2/10/22
- CRCL/DO Mina 2/10/22
- • OPS/DCOS Driscoll 2/10/22
- • OPA/DAS Bernstein 2/10/22
- MGMT/DCOS Clayton 2/11/22
- • OGC/DCOS McCleary 2/11/22
- PLCY/DCOS Gilmer 2/11/22
- OLA/COS Himmel 2/16/22

Following your clearance, this will be emailed to COS for final review. Please advise of your clearance or anything we may assist with.

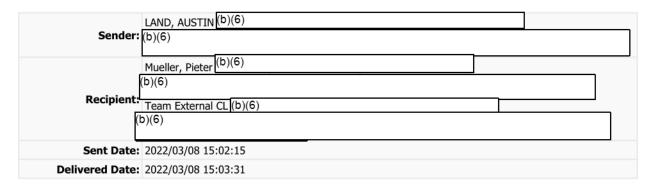
Thank you!

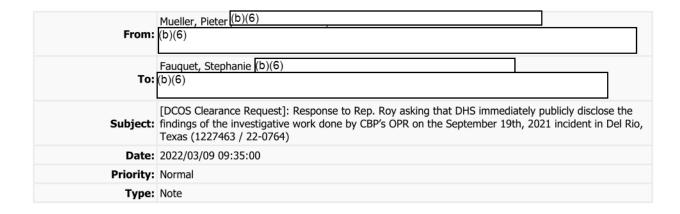
## Stephanie Fauquet

Assistant Executive Secretary
for Communications and Operations
Office of the Executive Secretary
U.S. Department of Homeland Security
(b)(6) (d)(b)(6) (c)

(b)(6)

#### 1227463 / 22-0764





#### Good morning DCOSs,

Please find attached for your review the incoming letter and draft response to Rep. Roy asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th, 2021 incident in Del Rio, Texas.

This response was drafted by CBP for Commissioner Magnus' signature and has been cleared by the following:

- PRIV/COS Taylor 2/10/22
- • CRCL/DO Mina 2/10/22
- • OPS/DCOS Driscoll 2/10/22
- • OPA/DAS Bernstein 2/10/22
- • MGMT/DCOS Clayton 2/11/22
- • OGC/DCOS McCleary 2/11/22
- PLCY/DCOS Gilmer 2/11/22
- • OLA/COS Himmel 2/16/22
- FO/ Sheila Solaimani 3/8/22

Following your clearance, this will be emailed to COS for final review. Please advise of your clearance or anything we may assist with.

Thank you!

## Stephanie Fauquet

Assistant Executive Secretary

for Communications and Operations

Office of the Executive Secretary

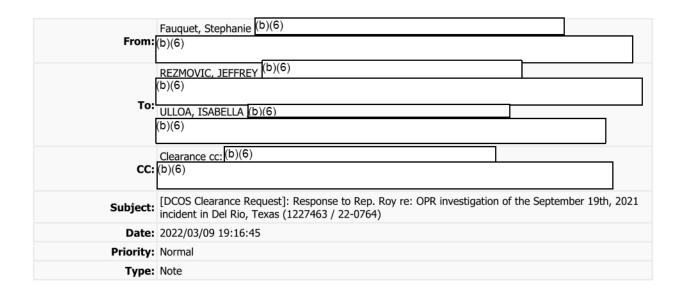
U.S. Department of Homeland Security

(b)(6)

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### 1227463 / 22-0764

Sender:	Mueller, Pieter (b)(6) (b)(6)	
Recipient:	Fauquet, Stephanie (b)(6) (b)(6)	
Sent Date:	2022/03/09 09:33:30	
Delivered Date:	2022/03/09 09:35:00	



#### Good Afternoon DCOSs,

Please find attached for your review the incoming letter and draft response to Rep. Roy asking that DHS immediately publicly disclose the findings of the investigative work done by CBP's OPR on the September 19th, 2021 incident in Del Rio, Texas.

This response was drafted by CBP for Commissioner Magnus' signature and has been cleared by the following:

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Thank you!

## Stephanie Fauquet

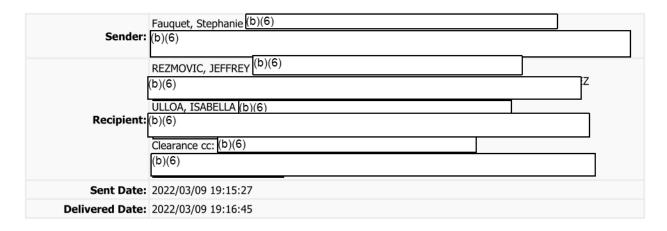
Assistant Executive Secretary

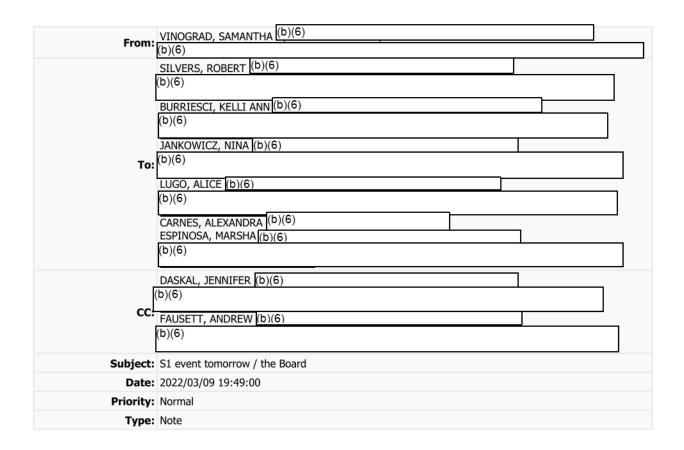
for Communications and Operations

Office of the Executive Secretary

U.S. Department of Homeland Security

(b)(6)	
(b)(6)	
1227463 / 22-0764	





Hi – tomorrow S1 is participating in the House Dem caucus conference in PHL. In his Ukraine MDM points, there is currently a reference to the Disinformation Governance Board.

• • The Department recently stood up the DHS Disinformation Governance Board to guide and support efforts to address MDM with a homeland security nexus. The Board represents a whole-of-department effort to address MDM while protecting privacy, civil rights, and civil liberties.

Earlier, we in PLCY discussed a potential rollout plan for the Board (Alice and Marsha we are planning to schedule time with you to flesh this out). I am comfortable with the mention of the Board in the context of this event tomorrow and wanted to flag the point currently in S1's materials.

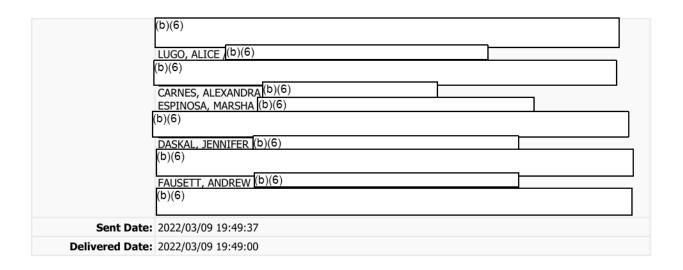
Sam

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Sender: VINOGRAD, SAMANTHA (b)(6)
(b)(6)

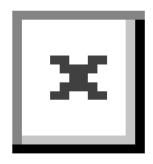
SILVERS, ROBERT (b)(6)
(b)(6)

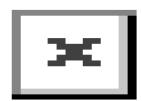
Recipient: BURRIESCI, KELLI ANN (b)(6)
(b)(6)

JANKOWICZ, NINA (b)(6)
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BRAUN, JACOB (b)(6)
From: (b)(6)
Tien, John (b)(6)
(b)(6)
CALLAHAN, MARY ELLEN (b)(6)
(b)(6)
Subject: Re: Press Roundup for WED, 3/16
<b>Date:</b> 2022/03/17 07:36:30
Priority: Normal
Type: Note
Well, that is something.  From: Tien, John (b)(6)  Sent: Wednesday, March 16, 2022 11:07:53 PM  To: CALLAHAN, MARY ELLEN (b)(6)  [b)(6)  Subject: Re: Press Roundup for WED, 3/16  Yep.  From: CALLAHAN, MARY ELLEN (b)(6)  Sent: Wednesday, March 16, 2022 9:32:13 PM
<b>Sent:</b> Wednesday, March 16, 2022 9:32:13 PM <b>To:</b> BRAUN, JACOB (b)(6)  Tien, John (b)(6)
To: BRAUN, JACOB (b)(6)  Tien, John (b)(6)  Subject: Fwd: Press Roundup for WED, 3/16
Subject: Fwd. Fless Roulldup for WED, 3/10
Wow on the axios article.  Mary Ellen Callahan Chief of Staff, Office of the Deputy Secretary
U.S. Department of Homeland Security
From: ESPINOSA, MARSHA (b)(6)
Sent: Wednesday, March 16, 2022 9:26 PM To: Mayorkas, Alajandro
To: Mayorkas, Alejandro Cc: Tien, John; CANEGALLO, KRISTIE; REZMOVIC, JEFFREY; ULLOA, ISABELLA; SEIDMAN, RICKI;
CALLAHAN, MARY ELLEN; LUGO, ALICE; PECK, SARAH
Subject: Press Roundup for WED, 3/16
Good evening, Secretary,
0)(5)





###

Marsha (Catron) Espinosa
Assistant Secretary, Office of Public Affairs
U.S. Department of Homeland Security
c (b)(6)

Sender:	BRAUN, JACOB (b)(6) (b)(6)
Recipient:	Tien, John (b)(6) (b)(6)  CALLAHAN, MARY ELLEN (b)(6) (b)(6)
Sent Date:	2022/03/17 07:36:26
Delivered Date:	2022/03/17 07:36:30

From: Robertory, Keith (b)(6)

To: SWB Planning (b)(6)

Subject: CBP Daily Social Listening Report: March 22, 2022

Date: 2022/03/23 09:04:03

Priority: Normal

Type: Note

Forwarding on behalf of External Affairs.

From: ELDOSOKY, JESSICA L (b)(6)

Sent: Tuesday, March 22, 2022 3:11:14 PM

Subject: Daily Social Listening Report: March 22, 2022



Daily Social Listening Report: March 22, 2022

#### **CONGRESSIONAL AND GOVERNMENTAL TWEETS**

<u>Rep Jeff Duncan</u> Biden's border crisis is only worsening w/ over 2 mil. illegal border crossings since he took office. Border officials estimate nearly 400K illegal immigrants have crossed the border w/o being caught. This is a threat to our national security and makes every state a border state.

<u>Rep Juan Vargas</u> 2 years ago today, #Title42 was implemented at our borders. It's an inhumane policy &we MUST end it. Everyone should be able to come to the U.S. to seek asylum. More on my thoughts tonight on @10News. #EndTitle42

<u>Rep Lee Zeldin</u> Our border is under siege and it's only getting worse! Is it really too much to ask for to get the Biden Administration to show some strong leadership and backbone to truly tackle this crisis at our southern border? **LINK** 

<u>Rep Chuck Grassley</u> The Biden Border Crisis continues. CBP experienced over 164k encounters at the southern border in February. That's a 63% increase from the same time last yr Pres Biden's immigration policies continue to drive record-shattering illegal immigration to our southern border

Rep Buddy Carter Securing the Southern Border → Protecting our children from Fentanyl-laced drugs

Rep Tom McClintock
Border security = national security. It's obvious President Biden has turned a blind eye to this FACT. Since Biden took office: -There have been 2 million illegal border crossings - Deportations dropped 68% in 2021 - reaching the lowest level in 26 years #BidenBorderCrisis

Rep Debbie Lesko Our nation is currently facing soaring gas prices, record-high inflation, rampant crime, and a raging border crisis. Instead of President Biden addressing these issues, he is biking in Delaware. Rep Tony Gonzales Today Uvalde officials alerted me that migrant facilities in the area are overcapacity and Border Patrol will be forced to release them at Stripes.Local authorities &Border Patrol have been completely handcuffed by the Admin. This White House has failed our border communities.

Rep Billy Long #JenPsaki has said the White House is NOT concerned with the crisis at the #border.

That's like firefighters not being concerned with a burning building. Unfortunately, it isn't surprising at all. This has been the administration's approach since day 1 to any crisis.

<u>Rep Patrick McHenry</u> We are seeing criminals, weapons, drugs, and trafficked persons come across our border in record numbers. One of these dangerous drugs, fentanyl, is causing an alarming number of overdose deaths. We must secure our border to help keep our communities safe.

#### **BORDER**

NBC News Russians trying to enter the United States at the Mexican border are frustrated they are not getting in like Ukrainians are, despite leaving their homeland over the invasion of Ukraine. LINK

Bob Price (Breibart) 4-Yr-Old Girl Found Abandoned by Smuggler in Texas on Border Riverbank breitbart.com/border/2022/03... #TexasBorderCrisis

<u>Julio Rosas</u> (Town Hall) I've been told by a source in the Yuma Sector today they have over 3,000 people in custody (way overcapacity) and still have close to 1,000 waiting by the border to be picked up by Border Patrol.

<u>Holly Hansen</u> (The Texan) Hispanic Texans Overwhelmingly Believe There Is a Border Crisis and Support Security Measures, Poll Suggests <u>LINK</u>

#### Adam Isacson (WOLA)

1/ New: @JoyLeeOlson and I drove from Del Rio to Brownsville, Texas, crossing to Mexico in 4 places. Follow the link for a photo narrative covering asylum, organized crime, militarization, and the crucial work good people are doing in this part of the border: LINK

2/ I've been to the border like 30 times before, but this trip (March 6-12) took a lot out of me. Maybe because coming back from too-infrequent pandemic travel. Or the sheer hugeness of the migrant flow in this part of the border. Or the palpable power of organized crime.

<u>3/</u> Or the cruelty of Title 42. Or my own sensitivity about being "a guy from Washington parachuting in and out." Anyway, I hope that these 2,800 words and 20 photos help to convey some of that. It's a rough time in south Texas and especially in Tamaulipas.

<u>Todd Bensman</u> (Immigration Studies) Neat: "A deeper dive into those numbers reveals that my colleague, Todd Bensman, may have been onto something when he suggested that the Biden administration's returns of certain nationals by air was impacting the border crisis." @CIS\_org <u>LINK</u>
<u>Todd Bensman</u> (Immigration Studies) Biden Administration's Secretive Air Deportation Flight Ops
Working Magic at Southern Border Now Imperiled <u>LINK</u>

Molly Hennessy-Fiske (Border Chronicle) Want to read more about the southern U.S. border? I just joined to read @MelissaLaLinea

<u>Rep Chuck Grassley</u> The Biden Border Crisis continues. CBP experienced over 164k encounters at the southern border in February. That's a 63% increase from the same time last yr Pres Biden's immigration policies continue to drive record-shattering illegal immigration to our southern border

#### **ACLU**

<u>1/</u> For two years, the US government has misused Title 42 to illegally expel people seeking safety under the guise of public health. The CDC will complete a new review of Title 42 by March 30 to decide whether to continue the policy.

2/ 12 Title 42 isn't really about protecting people from COVID-19 — it's about stopping people from seeking safety in the United States. The cruel policy has been criticized by leading epidemiologists and public health experts from the start.

<u>3/</u> 2½ Title 42 has made it impossible for people seeking asylum to do so in a safe and orderly way. Under this policy, people seeking safety can be immediately removed from the US with no consideration of their claims for protection and sent back to danger.

4/32 Officials have had more than a year to set up the infrastructure necessary to efficiently and humanely process people seeking safety at our borders. To the extent more work remains to be done, it should be a priority for the government to complete it.

5/42 The Department of Homeland Security has a multi-billion dollar budget. It has the resources needed to fulfill its responsibilities and prevent returning to its old, cruel, and wasteful methods.

6/52 Title 42 has been declared unlawful by the courts — and by one of the government's top lawyers. A former senior adviser in the State Department emphasized that "lawful, more humane alternatives plainly exist."

7/ It's past time to end Title 42 and restore the right to seek asylum.

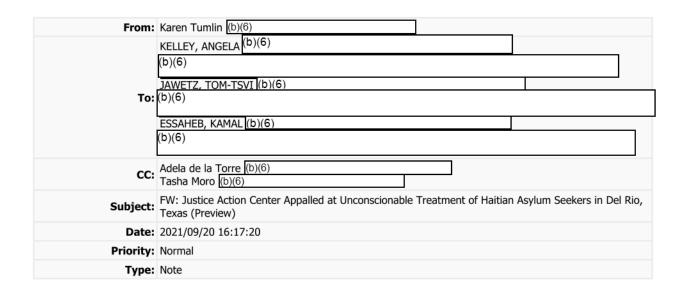
<u>Anna Giaritelli</u> Border Patrol in very remote West Texas are overwhelmed with noncitizens coming into custody that they are looking at releasing people at a gas station

<u>Anna Giaritelli</u>. @CBP and @DHSgov need to be transparent with the media and public about the investigation into the September 2021 Border Patrol "whipping" accusations and release the report <u>Anna Giaritelli</u> DHS Sec. Mayorkas vowed to complete an investigation into the Border Patrol whipping allegations in a "matter of days, not weeks." It's now been 6 MONTHS with no conclusion. The agents in question were still on desk duty as of last month. <u>LINK</u> @SecMayorkas

<u>The Hill</u> .@LeaderMcConnell: "The left spent years calling on Washington Democrats to abolish ICE. [...] The vice president ostensibly tasked with leading the White House border security efforts, seems keen to travel anywhere but the border." LINK

<u>Bill Melugin</u> (Fox) It has now been 6 months since DHS launched an investigation into false claims that horseback border agents in Del Rio "whipped" Haitian migrants. Secretary Mayorkas pledged it would be done in "days, not weeks." Still not done, &the involved agents remain off patrol duties.

Recipient: SWB Planning (b)(6)	
<b>Sent Date:</b> 2022/03/23 09:03:47	
<b>Delivered Date:</b> 2022/03/23 09:04:03	



CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

Hi,

Here is the Justice Action Center statement on the appalling treatment of asylum seekers in Del Rio, Texas.

Thanks,

--Karen

# Justice Action Center Appalled at Unconscionable Treatment of Haitian Asylum Seekers in Del Rio, Texas

Calls for Immediate End to Deportations and Installation of Safe and Orderly Asylum Process

https://justiceactioncenter.org/justice-action-center-appalled-at-unconscionable-treatment-of-haitian-asylum-seekers-in-del-rio-texas/

#### FOR IMMEDIATE RELEASE

#### September 20, 2021

LOS ANGELES—Justice Action Center (JAC) is appalled at the Biden administration's horrific treatment of mostly Haitian asylum seekers fleeing political unrest and environmental disaster. The images of <u>Border Patrol officers</u> on horseback yielding whips against defenseless asylum seekers in Del Rio, Texas, and the administration's continued and accelerated deportations of Haitians back to certain danger is unconscionable. JAC demands that the Biden administration immediately stop deportations and install an asylum process that is safe and orderly.

"The images coming out of Del Rio are appalling, disgraceful, and rooted in anti-Blackness," said Adela de la Torre, JAC deputy director. "President Biden campaigned on a pledge of dignity for immigrants and his administration's response to Haitians seeking asylum flies in the face of that promise. We need action, not lip service. The world is watching," she added.

Just last Friday, in a <u>video message</u> celebrating Citizenship Day, President Biden praised the bravery and courage of immigrants seeking a better life, noting the "the job of every single one of us to ensure that America remains a country worthy of immigrants' aspirations." Yet one day later, the Biden administration <u>announced</u> the deployment of 400 federal agents to, and the acceleration of deportation flights of Haitian asylum seekers out of, Del Rio. The Biden administration must respect these migrants' right to asylum.

###

Contact: Tasha Moro; 323-450-7269; tasha.moro@justiceactioncenter.org

Justice Action Center (JAC) is a new nonprofit organization dedicated to fighting for greater justice for immigrant communities by combining litigation and storytelling. JAC is committed to bringing additional litigation resources to address unmet needs, empower clients, and change the corrosive narrative around immigrants in the U.S. Learn more at justiceactioncenter.org.

