

United States Senate
WASHINGTON, DC 20510-0309

March 24, 2022

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

President Biden:

We write to you to express great concern about the lack of a specific plan from your Administration with respect to potential changes to the Title 42 Public Health authority, which the Department of Homeland Security (DHS) has relied on at the border during the coronavirus pandemic. Given the impacts that changes to Title 42 could have on border communities, border security, and migrants, we urge your Administration not to make any changes to Title 42 implementation until you are completely ready to execute and coordinate a comprehensive plan that ensures a secure, orderly, and humane process at the border. We also request that you provide a full briefing to Congress on your plan before implementation and execution.

On June 23, 2021, we wrote to Secretary Alejandro Mayorkas urging DHS to proactively establish and execute such a comprehensive plan in advance of an end to Title 42 authority and to brief our offices on this plan. Both of us followed that request with further outreach to DHS on this topic in the ensuing months.

To date, we have not yet seen evidence that DHS has developed and implemented a sufficient plan to maintain a humane and orderly process in the event of an end to Title 42. We are aware of the updated Irregular Mass Migration Contingency Plan that DHS has developed, but - with potential changes to Title 42 coming as early as next week - that strategy contains unanswered questions and does not seem likely to allow DHS to secure the border, protect our communities, and ensure migrants are treated fairly and humanely.

For the past two years, DHS has relied upon the health emergency authority under Title 42 to expel many migrants who would otherwise have potentially been held in congregate settings by U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). Last month alone, CBP expelled 91,513 migrants under Title 42, and processed 73,460 individuals under Title 8.¹ The January figures are comparable, showing only a slight trend upward on the number of expulsions. Of those encounters, nearly thirty percent occurred in Arizona.² A sharp end to Title 42 without a comprehensive plan in motion would significantly

¹ CBP Enforcement Statistics, "Southwest Land Border Encounters," <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last accessed Mar. 22, 2022).

² CBP Enforcement Statistics, "Nationwide Encounters," <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last accessed Mar. 22, 2022).

increase the strain on DHS, border communities, and local nonprofits that are already near or at capacity.

In the time that Title 42 has remained a temporary emergency authority, the United States has made progress in containing the transmission of COVID-19. This emergency authority should not be in effect indefinitely. Many expelled migrants have been waiting in limbo for months or years in dangerous locations, making them vulnerable to exploitation. At the same time, chaos at the border in a post-Title 42 scenario also negatively affects migrants' safety and could further strain an already overwhelmed health care system at the border. DHS must ensure their process at the border prioritizes the health, safety, and security of our border communities and prevents a humanitarian crisis that would harm migrants.

Given the prolonged reliance on Title 42 and continued high numbers of migrants crossing the border, any changes to the authority require robust and pragmatic preplanning, clear communications with border communities and stakeholders, and advance deployment of additional resources. This response will require coordination between DHS, the Centers for Disease Control and Prevention (CDC), and other partner agencies including Health and Human Services, the Department of Justice, and the Department of State. Different sectors and border communities will require different resources, so the plan must be developed in consultation with local government leaders and community organizations, including those providing services to migrants. Such groups in Arizona have not been consulted about Title 42 changes. Until the Administration does that type of consultation with local government leaders and nonprofits along the border, it is premature to consider changes to Title 42 authorities.

As Arizona's senators, we urge you to continue providing additional border management and security resources to Arizona so that our border communities do not have to bear any unnecessary burdens from Title 42 changes. Thank you for your attention to this matter. Please provide a response by March 31, 2022.

Sincerely,



MARK KELLY
United States Senator



KYRSTEN SINEMA
United States Senator

cc: Secretary of the Department of Homeland Security Alejandro Mayorkas
Attorney General of the United States Merrick Garland
Secretary of the Department of State Antony Blinken
Secretary of the Department of Health and Human Services Xavier Becerra
Director of the Centers for Disease Control and Prevention Rochelle Walensky