

United States Senate
WASHINGTON, DC 20510

November 18, 2022

Hon. Alejandro Mayorkas
Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528

Dear Secretary Mayorkas:

We are writing to express our deep concerns regarding the sudden impact that the November 15th ruling, by the U.S. District Court for the District of Columbia, could have on border communities, nongovernmental organizations (NGOs), the men and women of the Department of Homeland Security (DHS), and migrants seeking to enter the United States.¹

Since March of 2020, DHS has relied upon Title 42 authority to expel many migrants who would otherwise have been held in congregate settings by U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). In Fiscal Year 2022, of the over 2.3 million individuals encountered by CBP at the Southwest Border, just over 1 million were processed under the Title 42 authority.² While Title 42 expulsion totals reflect repeat attempts to enter the United States, a sharp end to Title 42 would nonetheless significantly increase the number of migrants apprehended along the Southwest Border under Title 8. This is a fact that DHS itself concedes. On April 26, 2022, you signed a memorandum, the DHS Plan for Southwest Border Security and Preparedness (the “April Memorandum”), which indicates that “[w]hen the Title 42 public health Order is lifted [DHS] anticipate migration levels will increase.”³

Since the Director of the Centers for Disease Control and Prevention (CDC) issued the Public Health Determination and terminated the Title 42 Order on April 1, 2022, we have expressed concern with DHS’ preparations for the end of Title 42, especially as the situation has deteriorated at times. Record annual encounters have led to untenable situations.⁴ In Arizona, shelters have been forced well beyond capacity.⁵ This month, El Paso has seen over 700 migrants

¹ *Huisha-Huisha v. Mayorkas*, No. 21-100 (D.D.C. 2022) (memorandum opinion granting Plaintiffs’ motion for partial summary judgment), Nov. 15, 2022, available at <https://www.documentcloud.org/documents/23307479-ruling-on-title-42>.

² U.S. Customs and Border Protection, *Nationwide Encounters*, Nov. 14, 2022, available at <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

³ U.S. Department of Homeland Security, *DHS Plan for Southwest Border Security and Preparedness*, Apr. 26, 2022, available at https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.

⁴ Kim, Juliana, *The U.S. Set a New Record for Apprehensions at the Southern Border*, NAT. PUB. RADIO, Oct. 24, 2022, available at <https://www.npr.org/2022/10/24/1130841306/new-record-in-border-patrol-apprehensions>.

⁵ Rodriguez, Paola, *Local Migrant Shelter Reaching Capacity After Influx of Migrants in Tucson*, ARIZ. PUB. MEDIA, Sept. 29, 2022, available at <https://news.azpm.org/p/news-topical-border/2022/9/29/213086-local-migrant-shelter-reaching-capacity-after-influx-of-migrants-in-tucson/>.

released directly onto city streets due to overcrowding.⁶ This is not safe, and creates a dangerous situation for migrants and communities.

Please provide answers to the following questions by December 1, 2022:

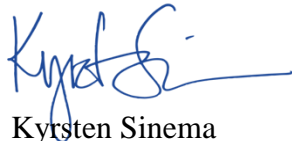
1. Given that the preliminary injunction issued by the U.S. District Court for the Western District of Louisiana stopped DHS from implementing its strategy outlined in the April Memorandum, how long will it take to operationalize previous efforts?
2. The effective management of this situation requires close and consistent coordination with local leaders to identify and fill gaps in operations. What lessons have been learned in establishing the Southwest Border Coordination Center and how can its operations be improved to meet this new situation?
3. The utilization of Border Patrol Agents to manage processing has limited the ability of the United States Border Patrol to maintain operational control between ports of entry. This has resulted in many agents receiving temporary duty assignments that take them away from their critical work in Northern Border sectors. Even with these temporary increases, full shift deployments into the field are impossible due to the high encounter numbers. For example, Arizona Border Patrol regularly sees over three-quarters of on-duty agents assigned to processing. How will DHS ensure sufficient resources are dedicated to patrolling and interdicting individuals attempting to enter the United States without inspection?
4. Border communities continue to bear the brunt of Washington's failure. While Border Patrol attempts to release migrants to NGOs, this is not always feasible. Has DHS been successful in helping NGOs enhance operations since the April Memorandum, and what additional steps will DHS take to expand NGO capacity and coordination moving forward?
5. When migrants are released, it creates costs for NGOs and local communities that respond. Many of these costs are reimbursable under the Emergency Food and Shelter Program (EFSP), however, others are not. What additional authorities does DHS require to ensure that local communities and NGOs are appropriately resourced to overcome this challenge?
6. As street releases occurred even with the Title 42 Order in effect, it seems likely that there will be more instances of migrants being released directly into communities without this authority in place. What lessons has DHS learned over this summer, and how will they be applied to avoid releasing migrants directly into communities without support moving forward?

⁶ Kapp, Shelby, *Hundreds of Migrants Released on Streets of El Paso But They're Not Venezuelans*, KTSM 9 NEWS, Nov. 10, 2022, available at <https://www.ktsm.com/local/el-paso-news/hundreds-of-migrants-released-on-streets-of-el-paso-but-theyre-not-venezuelans/>.

7. Means for transporting migrants has not always been readily available to DHS components when needed. What additional authorities does DHS require to make sure that capacity is available to appropriately decompress overcrowded sectors?
8. Earlier this week, in response to Questions for the Record from the May 4, 2022 hearing, you indicated that a soft-sided facility can be operationalized in 65 to 70 days, if land is already owned or leased by CBP. If the land must be procured, this process may take up to 110 days. With the anticipated influx of migrants, how many additional facilities will CBP need to operationalize? Further, how will CBP manage processing between the time that a need is identified and facilities are opened?
9. Processing coordinators can limit the need for Border Patrol Agents in processing centers. How many additional Border Patrol processing coordinators will be necessary to properly handle the anticipated influx and allow Border Patrol Agents to reenter the field?

We are committed to collaborating with you to ensure the fair and humane treatment of migrants apprehended along the Southwest Border, while also ensuring the safety of our communities. Thank you for your attention to this matter, and we look forward to your response December 1, 2022.

Sincerely,



Kyrsten Sinema
U.S. Senator



Mark Kelly
U.S. Senator



Margaret Hassan
U.S. Senator



Jon Tester
U.S. Senator