

United States Senate
WASHINGTON, DC 20510

March 1, 2021

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

Dear Secretary Mayorkas:

On March 21, 2020, President Trump announced that the Department of Homeland Security (the Department) would use the public health authority under Title 42, United States Code, to prohibit the introduction of persons entering the United States from Mexico and Canada to protect against the further spread of COVID-19 in the United States.¹ Individuals subject to the law have been repatriated back to their home countries, sometimes within hours. Former Acting Secretary Chad Wolf called the authority “one of the most critical tools the Department has used to prevent the further spread of the virus and to protect the American people, DHS frontline officers, and those in their care and custody from COVID-19.”²

Although challenged in court as it applies to unaccompanied alien children, in late January the United States Court of Appeals for the District of Columbia Circuit reversed a lower court, paving the way for the Department to continue using the authority.³ In defending the authority in circuit court, the Biden Administration argued that, “[g]iven such public health risks [from COVID-19], the CDC Director determined that it is imperative to prohibit entry and expel covered aliens as quickly as possible,” and noted that detention facilities are not designed to account for social distancing or quarantining to protect against the spread of COVID-19.⁴

Despite the court’s ruling, President Biden announced that the Department will not resume using the Title 42 authority to expel crossing minors.⁵ This decision, coupled with the

¹ U.S. Customs and Border Protection, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

² Department of Homeland Security, *Acting Secretary Wolf’s Statement on the Extension of Title 42* (May 19, 2020), <https://www.dhs.gov/news/2020/05/19/acting-secretary-wolf-s-statement-extension-title-42>.

³ *P.J.E.S. v. Pekoske*, No. 20-5357, Order, Doc. No. 1882899, Jan. 29, 2021.

⁴ Priscilla Alvarez and Geneva Sands, *The Biden administration is relying on a Trump-era policy to turn away migrants at border*, WENY News (Feb. 24, 2021), <https://www.weny.com/story/43400287/the-biden-administration-is-relying-on-a-trump-era-policy-to-turn-away-migrants-at-border>.

⁵ Nick Miroff, *Biden administration preparing another tent facility to cope with border influx*, Wash. Post (Feb. 26, 2021), <https://www.washingtonpost.com/national/immigration-facility-del-rio-texas/2021/02/26/a317bed4-7847->

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administration's irresponsible decisions to immediately terminate other immigration measures that had stemmed the tide of the 2018/2019 humanitarian crisis, has resulted in a concerning uptick of illegal migration at the southwest border. The number of minors crossing the border since November 2020 has steadily increased⁶, causing the administration to reopen overflow shelters to house them.⁷ The number of families crossing jumped from 4,650 in December to 7,490 in January – a period of time that typically sees lower numbers due to weather and holidays.⁸

News reports also suggest that, because of the recent surge in unaccompanied alien children and families, families are now being released into the United States in larger numbers and without COVID-19 testing, prompting at least one local community to request thousands of tests.⁹ McAllen, Texas Mayor Jim Darling questioned the new practice, complaining that releasing migrants into his community without testing is “irresponsible to not only the border but the whole United States.”¹⁰

Refusing to use the authorities available to law enforcement during a global pandemic creates unsafe conditions for Border Patrol agents and the broader public, as well as for the children traveling to the border. Not surprisingly, it is also resulting in a surge at the southwest border that our facilities and infrastructure are not able to handle.

We discussed my concerns of a potential surge in a January meeting, and again during your Senate confirmation hearing. In response to my questions during the hearing, you committed to enforce our current immigration laws and provide me with full information about what is happening at the border.¹¹ Accordingly, please provide answers to the following questions:

11eb-ae66-8b9e3c6918a1_story.html (“Biden ordered CBP to stop ‘expelling’ minors, and since then, the number of teens and children arriving without parents has ballooned”).

⁶ From 4,595 in November 2020; 4,995 in December 2020; and 5,871 in January. See U.S. Customs and Border Protection, *Southwest Land Border Encounters*, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁷ Nick Miroff, *Biden administration preparing another tent facility to cope with border influx*, Wash. Post (Feb. 26, 2021), https://www.washingtonpost.com/national/immigration-facility-del-rio-texas/2021/02/26/a317bed4-7847-11eb-ae66-8b9e3c6918a1_story.html.

⁸ See U.S. Customs and Border Protection, *Southwest Land Border Encounters*, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁹ Ed Lavandera, Ashley Killough and Kim Berryman, *There's an uptick in migrants crossing into the US, driven by economic woes and hopes for change under Biden*, CNN (Feb. 19, 2021), <https://www.cnn.com/2021/02/19/us/mexico-families-seek-us-asylum-texas-border/index.html>; see also Nick Miroff and Kevin Sieff, *Mexico has stopped accepting some Central American families 'expelled' by U.S. along the border*, Wash. Post (Feb. 3, 2021), https://www.washingtonpost.com/national/mexico-has-stopped-accepting-central-american-families-expelled-by-us-along-the-border/2021/02/03/39da9828-6650-11eb-bf81-c618c88ed605_story.html.

¹⁰ Ed Lavandera, Ashley Killough and Kim Berryman, *There's an uptick in migrants crossing into the US, driven by economic woes and hopes for change under Biden*, CNN (Feb. 19, 2021), <https://www.cnn.com/2021/02/19/us/mexico-families-seek-us-asylum-texas-border/index.html>.

¹¹ *Nomination of the Honorable Alejandro N. Mayorkas to be Secretary, U.S. Department of Homeland Security: Hearing before the Sen. Homeland Sec. & Governmental Affairs Comm.* (Jan. 19, 2021),

1. On what date did the Department stop expelling minors under Title 42? Who made this decision, and who was involved in the decision making process? Please provide any memorandum or other documents communicating the decision to Border Patrol.
2. On January 21, 2021, President Biden announced a requirement for international travelers flying to the United States to show proof of a negative COVID-19 test.¹² In that executive order, the President found that “Science-based public health measures are critical to preventing the spread of coronavirus disease 2019 (COVID-19) by travelers within the United States *and those who enter the country from abroad.*”¹³
 - a. How does the administration square this directive for Americans with its decision to release migrant families from custody into the United States without COVID-19 testing and other protocols?
 - b. What medical or other scientific research was relied upon to justify the decision to no longer use the Title 42 authority as it applies to children and teenagers?
3. As we reach capacity along our southwest border, what steps are you taking to deal with the surge of families and unaccompanied alien children?
 - a. How do you plan to protect Border Patrol agents and other personnel who are now processing minors and families without testing for COVID-19?

Please provide answers to these questions no later than March 15, 2021. Should you have any questions, please reach out to me directly, or contact Justin Stebbins on my staff at (202) 224-5323. Thank you for your attention to this matter.

Sincerely,



Ron Johnson
U.S. Senator

<https://www.hsgac.senate.gov/nomination-of-the-honorable-alejandro-n-mayorkas-to-be-secretary-us-department-of-homeland-security> (questioning by Sen. Johnson).

¹² The White House, *Executive Order on Promoting COVID-19 Safety in Domestic and International Travel* (Jan. 21, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-promoting-covid-19-safety-in-domestic-and-international-travel/>.

¹³ *Id.* (emphasis added).