

# United States Senate

WASHINGTON, DC 20510

## VIA ELECTRONIC TRANSMISSION

August 12, 2021

The Honorable Alejandro Mayorkas  
Secretary  
Department of Homeland Security  
2703 Martin Luther King Jr Ave SE  
Washington, DC 20593

Dear Secretary Mayorkas:

We write today seeking an explanation of the Department of Homeland Security's reckless decision to release tens of thousands of illegal immigrants, including potentially dangerous criminals, into the country without a proper and complete Notice to Appear (NTA) for formal removal proceedings in immigration court. While this policy in and of itself is deeply disturbing, we are troubled that, of the over 50,000 illegal immigrants released into the country since March, less than 13% have even reported to an Immigrations and Customs Enforcement (ICE) Office within the assigned 60-day window to pick up their NTA.<sup>1</sup> This is a clear sign the policy of releasing illegal immigrants into the country without a NTA and a court date is failing miserably, and must be reversed immediately.

As you know, the Supreme Court recently reiterated in *Niz-Chavez v. Garland* that for a NTA to effectively trigger removal proceedings, it must include every one of the statutorily-required elements in a single document. A so-called "Notice to Report" or other such document does not commence removal proceedings, and an alien who fails to report does not face serious consequences—such as an *in absentia* order of removal. This failure to uphold our nation's immigration laws at the southern border is an invitation for dangerous, criminal illegal immigrants to enter our country without repercussion. The decision to release illegal immigrants without a NTA sends a signal that those who unlawfully cross our borders and fail to appear before ICE—or better yet, in immigration court—will likely not be removed.

These open border policies only make it easier for smugglers and transnational criminal organizations to recruit migrants to make the dangerous journey to the southwest border, and divert the U.S. Border Patrol away from its primary mission of preventing the flow of contraband and illegal immigrants into the United States. Allowing uncontrolled illegal immigrations is harmful to our nation, and it is wrong to encourage more illegal immigration to the country in the middle of a pandemic when millions of hardworking Americans remain out of work and in desperate situations.

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<sup>1</sup> Stef W. Kight, *Scoop: 50,000 migrants released; few report to ICE*, AXIOS (July 27, 2021), <https://www.axios.com/migrant-release-no-court-date-ice-dhs-immigration-33d258ea-2419-418d-abe8-2a8b60e3c070.html>.

It is clear these catch-and-release policies are helping to fuel the record-breaking surge in people attempting to illegally cross the U.S.-Mexico border. Due to the Biden Administration's failure to secure the border and effectively deter illegal immigration, we have surpassed more than 1 million border encounters this year. According to the latest preliminary data revealed in court filings, Customs and Border Protection (CBP) estimates over 210,000 encounters along the southwest border in July alone. This is the highest monthly number of encounters in twenty years. And according to figures obtained by *Axios*, of the 50,000 illegal immigrants released into the U.S. since March without a NTA, over 16,000 have already ignored the 60-day window in which they were required to report to ICE and pick up a NTA.<sup>2</sup>

DHS's failure to deter illegal immigration has serious humanitarian and public safety consequences. In June 2021, for example, the Pima County Medical Examiner's Office reportedly found 43 sets of human remains in Arizona's border region.<sup>3</sup> Brooks County, Texas had recorded 34 bodies and human remains on cattle ranches through June.<sup>4</sup> The NGOs that have agreed to temporarily house migrants are completely at capacity, and migrants are now reportedly sleeping on downtown streets in McAllen, Texas.<sup>5</sup> And senior CBP officials and union members recently stated that many migrants are being released without being tested for COVID-19, placing both the migrants and the public at large at increased risk.<sup>6</sup> Meanwhile, in FY 2021, U.S. Border Patrol has seen a significant increase in the number of aliens encountered who have been convicted of assault, battery, domestic violence, burglary, robbery, larceny, theft, fraud, driving under the influence, homicide, manslaughter, illegal drug possession or trafficking, illegal weapons possession, transport, or trafficking, and sexual offenses.<sup>7</sup>

Since June 4, ICE has arrested over 300 convicted sex offenders already in the country.<sup>8</sup> This "honor system" for illegal immigrants is dishonoring our borders and our legal immigration system, and is also leading to the release of potentially dangerous criminal aliens into the country without a way to track them. This is deeply disturbing at a time when CBP has seen a surge in arrests for illegal immigrants entering the country who are murderers, sex offenders, and drug traffickers.

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<sup>2</sup> *Id.*

<sup>3</sup> Anita Snow, *More migrant deaths recorded in heat along Arizona border*, PBS NEWS HOUR (July 12, 2021, 8:41 PM), <https://www.pbs.org/newshour/politics/more-migrant-deaths-recorded-in-heat-along-arizona-border>.

<sup>4</sup> Nick Miroff, *Huge border influx brings fears of grim summer for migrant deaths*, THE WASHINGTON POST (June 3, 2021, 4:43 PM), [https://www.washingtonpost.com/national-security/summer-migrant-deaths-southern-border/2021/06/03/a03d7bb8-c3a6-11eb-8c34-f8095f2dc445\\_story.html](https://www.washingtonpost.com/national-security/summer-migrant-deaths-southern-border/2021/06/03/a03d7bb8-c3a6-11eb-8c34-f8095f2dc445_story.html).

<sup>5</sup> Sandra Sanchez, *DHS continues releasing busloads of migrants at overcrowded shelter, prompting urgent calls for pause*, BORDER REPORT (July 27, 2021, 6:21 PM), <https://www.borderreport.com/news/dhs-continues-releasing-busloads-of-migrants-at-overcrowded-shelter-prompting-urgent-calls-for-pause/>.

<sup>6</sup> Anna Giaritelli, *Border Patrol not testing migrants for COVID before they're released across U.S.*, WASHINGTON EXAMINER (Aug. 2, 2021, 3:25 PM), <https://www.yahoo.com/lifestyle/border-patrol-not-testing-migrants-192500361.html>.

<sup>7</sup> U.S. Customs & Border Protection, *Criminal Noncitizen Statistics Fiscal Year 2021* (last modified July 16, 2021), <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics>.

<sup>8</sup> Adam Shaw, *ICE nabs more than 300 illegal immigrant sex offenders since June as part of national operation*, FOX NEWS (July 26, 2021), <https://www.foxnews.com/politics/ice-300-illegal-immigrant-sex-offenders-june-nationwide-effort>.

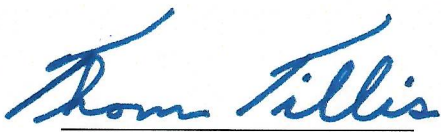
DHS must deter illegal immigration and effectively track any aliens released into the country to ensure that they appear in immigration court. With our borders open and without proper border and interior enforcement, it will take extraordinary efforts by ICE to apprehend illegal immigrants due to this irrational catch-and-release policy. In light of these shocking statistics, we ask that you personally respond to the following questions no later than September 9, 2021:

1. How many illegal immigrants have been released into the U.S. since January 20, 2021 without receiving a NTA which includes all the statutorily-required elements in a single document?
2. Of those who have been released into the country without a NTA, how many have followed through to appear at an ICE office? How many have failed to appear at an ICE office? How many are still within the 60-day reporting window?
3. What, if any, tracking measures are being employed to monitor migrants who have been released into the country without a NTA?
4. What actions is ICE taking to apprehend and deport those who have failed to appear within 60 days? Does ICE intend to take action to locate, apprehend, and remove aliens who unlawfully enter the United States along the southwest border and fail to maintain any form of lawful presence?
5. Is CBP conducting records checks of available law enforcement databases following apprehensions along the southwest border? Has the records check process been abbreviated in any way since January 20, 2021? Has CBP released anyone into the country without conducting such a records check?
6. Were any of those released into the country without a NTA convicted felons, violent criminals, sex offenders, terrorists, or drug traffickers? Has DHS tracked and maintained records on those released into the interior since January 20, 2021 who have gone on to be accused, charged with, or convicted of a criminal offense? If so, how many were accused, charged or convicted, and what were their offenses? Have these criminal aliens committed any additional crimes? What actions will ICE take to identify and deport these dangerous criminal aliens?
7. What was the policy reason for releasing migrants into the United States without a NTA? What was the legal basis for this policy? Was this a decision by the Department, or was it in consultation with the White House? Who is responsible for deciding to pursue this reckless policy?
8. What policies will the Department of Homeland Security take to deter illegal immigration, address the downstream public safety and humanitarian effects of illegal immigration, and ensure that everyone apprehended will receive a final decision through


either the expedited removal process or section 240 proceedings? What actions will you and the Biden Administration take to mitigate the damage already done by this failing policy, and what policies are you considering to replace this misguided policy?

Thank you for your prompt attention to this serious matter. We look forward to your timely response on this critical issue.

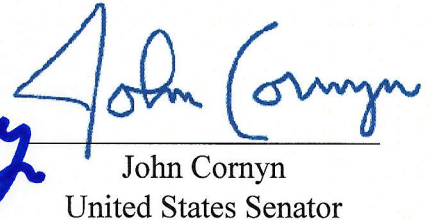
Sincerely,



Thom Tillis  
United States Senator



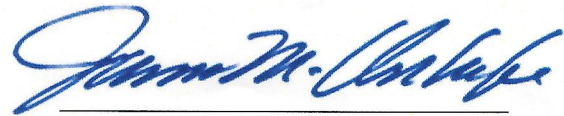
Charles E. Grassley  
Ranking Member  
Senate Judiciary  
Committee



John Cornyn  
United States Senator



Susan M. Collins  
United States Senator



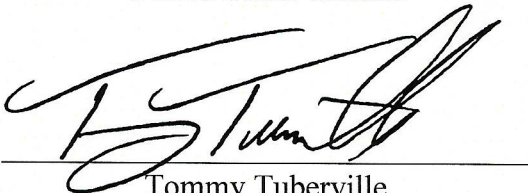
James M. Inhofe  
United States Senator



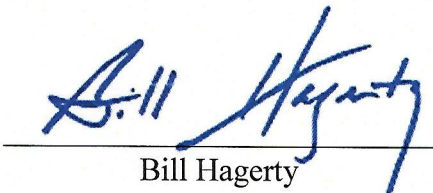
Kevin Cramer  
United States Senator



Mike Braun  
United States Senator



Tommy Tuberville  
United States Senator



Bill Hagerty  
United States Senator