

# **Prepared Statement**

**For Hearing Entitled:**

**“The Border Crisis: Is the Law Being  
Faithfully Executed?”**

**Before the**

**Subcommittee on Immigration Integrity,  
Security, and Enforcement**

**of the**

**Committee on the Judiciary**

**U.S. House of Representatives**

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Chairman McClintock, Ranking Member Jayapal, and distinguished Members of the Committee, my name is Steve Bradbury, and I am a Distinguished Fellow at The Heritage Foundation.

Before joining Heritage, I served in the Trump administration as the Senate-confirmed General Counsel of the U.S. Department of Transportation, as the Acting Deputy Secretary of Transportation, and briefly as the Acting Secretary of Transportation.

Previously, during the administration of George W. Bush, I served as the Acting Assistant Attorney General and Principal Deputy Assistant Attorney General for the Office of Legal Counsel in the U.S. Department of Justice. In my position at the Justice Department, I advised the president and heads of executive departments on the requirements of federal law, including laws relating to immigration and homeland security.

The views I express in this statement and in my testimony before the Committee are my own and should not be construed as representing any official position of The Heritage Foundation.

I am grateful to the Committee for the opportunity to speak with you today about the important legal issues raised by the border security and immigration enforcement policies of the Biden administration.

## **Introduction**

Far from faithfully executing the laws they are charged with enforcing, Secretary Alejandro Mayorkas and the Biden administration have repeatedly violated and persist in violating numerous provisions of law central to the operation of our nation's immigration system and critical to the safety and security of the American people. No adverse court decision seems able to put an effective stop to these violations.

Through their ultra vires policies, Secretary Mayorkas and the president have arrogated to themselves the power to overturn the laws enacted by Congress and replace them with new and wholly unauthorized immigration "pathways" through which is streaming into our country an ever-rising flood of illegal immigration. Together, these violations have produced a colossal humanitarian disaster at our southern border and a generational catastrophe for communities across America.

Not to be overlooked, on top of his sweeping violations of the immigration laws, Secretary Mayorkas has also flouted his statutory duty to protect the most vulnerable of migrant children from the scourge of human trafficking and exploitation.

**The Available Pathways and Requirements for Lawful Immigration Are Defined by Congress, Not by the Executive Branch.**

Under Article I, section 8 of our Constitution, it is for Congress, not the executive branch, to establish the legal requirements governing immigration. Through enactment of the immigration laws, primarily the Immigration and Nationality Act, or INA, as amended by later enactments, Congress has established and defined the available pathways for lawful immigration. The executive branch does not have authority to create new pathways for foreign migrants to enter the U.S. that have not been expressly authorized by Congress. Rather, it is the duty of the executive faithfully to enforce the requirements of the immigration laws enacted by Congress.<sup>1</sup>

Congress has created various visa programs and defined other legal requirements for non-U.S. nationals to be allowed entry into the United States. Aliens seeking to enter the U.S. must have a visa or other proper documentation and must present themselves at a designated port of entry and be screened by officers of the Customs and Border Protection service, or CBP, of the Department of Homeland Security (DHS). Under sections 212 and 235 of the INA, if the alien does not have proper immigration documents or a legal basis for entry or if the alien attempts to cross the border illegally between ports of entry, the alien is inadmissible and must be turned away or removed from the United States.<sup>2</sup>

Under INA section 212(a), certain categories of aliens, including minors, who pose risks to the safety of Americans or to the security of the United States are inadmissible and, subject to very narrowly circumscribed waiver authorities, may not be granted entry even if they have proper immigration documents or a credible basis to claim asylum. These include, among others, persons with communicable diseases, violent criminals, gang members, repeat offenders, certain other categories of criminals, suspected terrorists, drug traffickers, smugglers, human traffickers, war

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<sup>1</sup> See *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (holding that Congress—not the president or executive branch officials—has the “complete and absolute power” over the subject of immigration and “plenary power” over the admission and exclusion of aliens).

<sup>2</sup> 8 U.S.C. §§ 1182(a)(6)(A)(i), 1182(a)(7)(A)(i), & 1225(b)(1).

criminals, those who have committed immigration fraud or previously violated the immigration laws, and those affiliated with a Communist or other totalitarian party.<sup>3</sup>

Regarding *asylum*, under INA section 235(b)(1), any alien at the border who seeks to enter the U.S. by applying for asylum or by otherwise claiming a fear of persecution in his home country must be interviewed by an asylum officer, and if the officer finds that the alien lacks a credible fear of persecution within the meaning of the INA, the alien must be removed from the United States without further hearing, unless the alien appeals the credible-fear determination to an immigration judge.<sup>4</sup> Pending resolution of the alien’s asylum proceeding, the alien is subject to “*mandatory detention*”—specifically, section 235(b)(1)(B) declares that the alien “*shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.*”<sup>5</sup>

If the alien claiming asylum has arrived by land from a foreign territory contiguous to the U.S., such as Mexico, the Secretary “*may return the alien to that territory pending the resolution of the alien’s asylum proceeding.*”<sup>6</sup> This provision is the source of authority for the Migrant Protection Protocols (MPP), or so-called “Remain in Mexico Program,” put in place by the Trump administration and now largely abandoned by the Biden administration.

In contrast, aliens who are not already within the United States or physically at the U.S. border are not eligible to claim asylum status as a basis for entering the U.S. Rather, non-U.S. nationals who are outside the United States and who wish to enter based on claims that they face a fear of persecution in their home countries must apply for admission as *refugees*. In other words, asylum applicants and refugee applicants must both prove a similar fear of persecution, but the procedures available to each are different.

To be admitted to the U.S. as a refugee, the alien who is outside the U.S. must satisfy the established protocols for refugee admissions authorized by Congress under section 207 of the INA.<sup>7</sup> The U.S. Refugee Admissions Program (USRAP) is jointly administered by the Department of State and DHS, which work together with

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<sup>3</sup> See 8 U.S.C. § 1182(a).

<sup>4</sup> 8 U.S.C. § 1225(b)(1)(iii)(I).

<sup>5</sup> 8 U.S.C. § 1225(b)(1)(iii)(IV) (emphasis added).

<sup>6</sup> 8 U.S.C. § 1225(b)(2)(C) (emphasis added).

<sup>7</sup> See 8 U.S.C. § 1157(c).

the United Nations High Commissioner for Refugees, at locations around the world to identify, interview, and adjudicate applications for refugee protection.<sup>8</sup> Under the USRAP protocols, aliens applying for refugee protection are only allowed to travel to the U.S. and enter as refugees after they have been vetted by several law enforcement and intelligence agencies and DHS has granted their refugee applications. Generally, refugee admissions are subject to annual numerical limits, and, in addition to establishing the requisite fear of persecution, refugee applicants typically must show that they cannot secure safe haven in a third country.

Much has been made of the *parole* authority available to the Secretary of Homeland Security. Under INA section 212(d)(5)(A), the Secretary is given a very narrow authority to “parole” individual aliens into the United States for temporary periods but “*only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.*”<sup>9</sup> The recognized grounds for parole include, for example, situations where a particular alien needs to come into the United States temporarily to receive critical medical care or is needed to testify in the U.S. as a witness in an important criminal trial. These are situations, typically, where the alien parolee does not have time to obtain a visa.

Section 212(d)(5)(B), moreover, expressly prohibits the Secretary from paroling into the U.S. any alien who is a refugee—that is, who claims a right to enter the U.S. based on a fear of persecution—unless the Secretary determines that “*compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee.*”<sup>10</sup>

Finally, for aliens found within the interior of the country, INA section 237 governs *removal and deportation*. Section 237(a)(1) provides that any alien who is present in the U.S. in violation of the immigration laws or any alien found to have committed several types of crimes, terrorist activity, drug or human trafficking, or other misconduct “*is deportable.*”<sup>11</sup> Immigration and Customs Enforcement, or ICE, is the component of DHS responsible for arresting such aliens and initiating removal or deportation proceedings. Under section 236, ICE is required to take certain cate-

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<sup>8</sup> See U.S. Department of State, “Refugee Admissions: U.S. Refugee Admissions Program,” <https://www.state.gov/refugee-admissions>.

<sup>9</sup> 8 U.S.C. § 1182(d)(5)(A) (emphasis added).

<sup>10</sup> 8 U.S.C. § 1182(d)(5)(B) (emphasis added).

<sup>11</sup> 8 U.S.C. § 1227(a)(1) (emphasis added).

gories of deportable aliens into custody, including after they have served any sentence of incarceration, and is prohibited from releasing such aliens pending removal or deportation proceedings except in very narrow circumstances.<sup>12</sup>

### **The Biden Administration Is Deliberately Violating Numerous Provisions of the Immigration Laws.**

Acting in pursuit of the President’s immigration policy agenda, Homeland Security Secretary Alejandro Mayorkas has purposefully violated and continues to violate every one of the INA provisions described above, including by purporting to create expansive new “pathways” for immigration that are illegal because they have never been approved by Congress and conflict with the express terms of the statutes Congress has enacted.

#### ***Violations of INA Section 212’s Restrictions on the Scope and Use of Parole***

Let’s take parole first. Under Secretary Mayorkas’s supervision and at his direction, DHS has released and continues to release tens of thousands of aliens every month into the United States through mass parole in violation of the express requirements of INA section 212(d)(5)(A).

Among other questionable uses of categorical parole, Secretary Mayorkas created “Operation Allies Welcome” as a means of paroling 73,000 Afghan evacuees directly into the U.S. in the wake of the Biden administration’s chaotic abandonment of Afghanistan, rather than relocating them to a safe third country where they could apply for refugee protection through theUSRAP process.<sup>13</sup> Even if there were urgent humanitarian reasons and significant public benefits associated with the mass parole of Afghan evacuees, the Afghan parole program was not administered in a manner that would advance those interests. The DHS Inspector General reported that the Afghans were not adequately screened,<sup>14</sup> despite Secretary Mayorkas’s contrary assurances to Congress and the American public, and that DHS failed to track Afghan parolees who were allowed to walk away from the military bases where they

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<sup>12</sup> See 8 U.S.C. § 1226(c).

<sup>13</sup> See Department of Homeland Security, “Operation Allies Welcome,” <https://www.dhs.gov/allieswelcome>.

<sup>14</sup> Department of Homeland Security, Office of Inspector General, “DHS Encountered Obstacles to Screen, Vet, and Inspect All Evacuees During the Recent Afghanistan Crisis (Redacted),” OIG-22-64, September 6, 2022, <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-64-Sep22-Redacted.pdf>.

were initially housed.<sup>15</sup> The Inspector General further reported that DHS did not attempt to locate all Afghans who left the bases to verify their compliance with parole conditions.<sup>16</sup>

Following the flawed model used for the Afghan evacuees, Secretary Mayorkas created five additional nationality-based mass-parole programs to bring other large populations of aliens into the U.S. First, in April 2022, DHS announced the “Uniting for Ukraine” parole program, with a commitment to allow 100,000 Ukrainians entry into the U.S.<sup>17</sup> Then, in October 2022, DHS created a “Parole Process for Venezuelans” for up to 24,000 beneficiaries, modeled on the Uniting for Ukraine parole process.<sup>18</sup> Most recently, in January 2023, DHS established mass parole programs for Cubans, Haitians, and Nicaraguans, which, combined with the program for Venezuelans, was intended to bring to the U.S. up to 30,000 aliens per month from the four countries.<sup>19</sup> Even apart from the January announcement, CBP reported that it was already paroling many tens of thousands of aliens into the U.S. each month (designated as “humanitarian release”), including more than 140,000 in December 2022 alone.<sup>20</sup>

Secretary Mayorkas does not have authority to create what are effectively new visa programs for hundreds of thousands of aliens annually from Cuba, Haiti, Nicaragua, Venezuela, and elsewhere. Only Congress has such authority. These parole programs violate the law because they fail each of section 212(d)(5)(A)’s three required limiting factors: The parole decisions are not made for individual aliens on a case-by-case basis, they involve no real assessment of humanitarian need, let alone an urgent need, and they advance no significant public benefit. The purposes they

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<sup>15</sup> Department of Homeland Security, Office of Inspector General, “The Unified Coordination Group Struggled to Track Afghan Evacuees Independently Departing U.S. Military Bases,” OIG-22-79, September 29, 2022,

<sup>16</sup> *Ibid.*

<sup>17</sup> Department of Homeland Security, “Uniting for Ukraine,” <https://www.dhs.gov/ukraine>.

<sup>18</sup> Notice, Department of Homeland Security, “Implementation of a Parole Process for Venezuelans,” 87 Federal Register 63507 (October 19, 2022), <https://www.federalregister.gov/documents/2022/10/19/2022-22739/implementation-of-a-parole-process-for-venezuelans>.

<sup>19</sup> Department of Homeland Security, Press Release, “DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes,” January 5, 2023, <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

<sup>20</sup> U.S. Customs and Border Protection, “Custody and Transfer Statistics FY2023,” <https://www.cbp.gov/node/380450>.

serve are inconsistent with section 212: Mayorkas created these new streamlined channels, unauthorized by Congress, for the purpose of quickly processing vastly increased numbers of inadmissible aliens into the U.S. in furtherance of the Biden administration’s policy goals.

In the course of an opinion addressing termination of the Remain in Mexico Program (a decision reversed on other grounds by the Supreme Court), the U.S. Court of Appeals for the Fifth Circuit condemned Secretary Mayorkas’s parole policies in December 2021, calling them “the opposite of *case-by-case* decision-making,”<sup>21</sup> and concluding that they “ignor[e] the limitations Congress imposed on the parole power” and are best described as “*misenforcement*, suspension of the INA, or both.”<sup>22</sup> Notwithstanding the Fifth Circuit’s strong condemnation, Secretary Mayorkas has continued to rely upon and, indeed, to expand his unlawful use of mass parole.

Texas and 20 other states have now filed suit challenging DHS’s mass parole programs for Haitians, Cubans, Venezuelans, and Nicaraguans. The 21 states are seeking to enjoin these programs as a violation of law, and the case is currently scheduled for a bench trial in federal district court at the end of the summer.<sup>23</sup>

### ***Violation of INA Section 212’s Restrictions on Parole of Refugees***

Secretary Mayorkas is also mass-paroling aliens he himself characterizes as refugees or asylum seekers, in direct violation of section 212(d)(5)(B)’s prohibition on the parole of any refugee into the U.S. unless there are “*compelling reasons*” requiring that “*that particular alien*” be admitted by parole rather than going through the USRAP process for refugee admissions under INA section 207—a process Secretary Mayorkas is deliberately circumventing.

By treating the masses of aliens who illegally enter the U.S. as *de facto* refugees—calling them “asylum seekers” and “people fleeing humanitarian

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<sup>21</sup> *Texas v. Biden*, No. 21-10806 (5th Cir. 2021), p. 4 (emphasis in original).

<sup>22</sup> *Ibid.*, pp. 105-06 (emphasis in original).

<sup>23</sup> See *Texas v. U.S. Department of Homeland Security*, Case No. 6:23-cv-7 (S.D. Tex. 2023), [https://www.courtlistener.com/?type=r&q=docket\\_id:66754800](https://www.courtlistener.com/?type=r&q=docket_id:66754800); see also <https://www.courtlistener.com/docket/66754800/156/state-of-texas-v-us-department-of-homeland-security/> (latest joint proposed scheduling order).



crises”<sup>24</sup>—but without taking the steps necessary to establish that they actually qualify as refugees within the requirements of the INA, Secretary Mayorkas created the humanitarian disaster we have seen unfold at our southern border over the past two-plus years.

Publicly telegraphing that almost any alien coming to our border, particularly unaccompanied children,<sup>25</sup> would be welcomed into the U.S. if they asserted a fear of returning to their home countries, he personally encouraged millions of men, women, and children, including hundreds of thousands of unaccompanied minors, to make the dangerous trek to and through Mexico, putting themselves at the mercy of drug cartels, smugglers, and human traffickers.

Just as bad, he has telegraphed to millions of aliens who may consider making this trek in the future that they can enter the U.S. “lawfully” if they claim a fear of returning to their home country, thereby encouraging asylum fraud.<sup>26</sup> As the Secretary well knows, the overwhelming majority of the millions of illegal aliens encountered at our southern border due to the Biden administration’s policies<sup>27</sup> have come to the U.S. for economic reasons, not from any fear of persecution.<sup>28</sup>

Other countries have already offered and provided some of these same aliens safe haven, making them unlikely to qualify as refugees even if they had a true fear of persecution. For example, Ukrainians have been offered safe resettlement and

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<sup>24</sup> Secretary Alejandro Mayorkas, Remarks, “Secretary Mayorkas Delivers Remarks on DHS’s Continued Preparation for the End of Title 42 and Announcement of New Border Enforcement Measures and Additional Safe and Orderly Processes,” January 5, 2023, <https://www.dhs.gov/news/2023/01/05/secretary-mayorkas-delivers-remarks-dhss-continued-preparation-end-title-42-and>.

<sup>25</sup> Alejandro Mayorkas, Interview with Chris Wallace, Fox News Sunday, March 21, 2021, <https://www.foxnews.com/transcript/trump-administration-dismantled-safe-border-policies-biden-rebuilding-process-dhs-chief-mayorkas>.

<sup>26</sup> Secretary Mayorkas stated that these parole programs “create additional safe and orderly processes for people fleeing humanitarian crises to lawfully come to the United States.” *Ibid*.

<sup>27</sup> Santiago Perez and Michelle Hackman, “Record Numbers of Migrants Arrested at Southern Border, With Two Million Annual Total in Sight,” *The Wall Street Journal*, August 15, 2022, <https://www.wsj.com/articles/illegal-immigration-arrests-hit-record-reasons-for-border-crossings-changing-11660599304>.

<sup>28</sup> U.S. Department of Justice, Executive Office for Immigration Review, “Adjudication Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim,” data generated October 13, 2022, <https://www.justice.gov/eoir/page/file/1062976/download>.

employment authorization in eastern European countries;<sup>29</sup> Chile and Brazil provided resettlement and documentation to Haitians for years.<sup>30</sup> Yet many Ukrainians bypassed eastern Europe for the U.S., and other aliens discarded their South and Central American resettlement documents after crossing our border to claim a fear of returning to their home countries, knowing that doing so was the way to enter and remain in the U.S. under Secretary Mayorkas's policies.

And some of these parolees have undoubtedly come for malign and illicit reasons, including drug trafficking for the powerful Mexican and Latin drug cartels, human trafficking, or terrorist purposes, which would render them inadmissible regardless of any claim of persecution.

In short, an overwhelming percentage of the aliens who have entered the U.S. under Mayorkas's parole programs neither qualify as refugees nor meet the strict standards for case-by-case parole into the U.S.

In deliberately paroling every month tens of thousands of illegal and inadmissible aliens he calls asylum seekers, Secretary Mayorkas is flagrantly violating section 212(d)(5)(B), and all decisions and actions taken to advance these mass-parole programs are unlawful.

### ***Other Violations of INA Section 212***

Because he is not conducting adequate individualized vetting of the huge volume of mass-released aliens, Secretary Mayorkas is also violating the provisions of INA section 212(a) that declare various categories of dangerous aliens "inadmissible." There is simply no way of knowing how many of the millions of aliens Mayorkas has released into the U.S. (or of the estimated 2 million "got-aways" who have illegally crossed the southern border and evaded Border Patrol during Mayorkas's tenure<sup>31</sup>) fall into these categories of dangerous aliens that Congress has prohibited from entering the U.S.

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<sup>29</sup> Andreea Ofiteru, "Thousands of Ukrainians Seek Safety in Romania, Moldova, and Poland, as They Flee Russian Invasion," Radio Free Europe, February 25, 2022, <https://www.rferl.org/a/ukraine-refugees-russian-invasion-poland-romania-moldova/31723527.html>.

<sup>30</sup> Juan Montes and Santiago Perez, Haitian Migrants, Rebuffed by U.S., Cause Crisis for Mexico," *The Wall Street Journal*, September 23, 2021, <https://www.wsj.com/articles/haitian-migrants-rebuffed-by-u-s-now-cause-crisis-for-mexico-11632430460>.

<sup>31</sup> Stephen Dinan, Border Numbers Worsened in October; Historic Number of Gotaways, *The Washington Times*, November 5, 2022, <https://www.washingtontimes.com/news/2022/nov/5/border-numbers-wor->

For example, Secretary Mayorkas has repeatedly stated that unaccompanied alien minors will not be turned back from our border.<sup>32</sup> These statements have encouraged historic numbers of illegal alien minors to cross unaccompanied,<sup>33</sup> including teen-aged MS-13 gang members, who are then released into the U.S. One such 17-year-old gang member allowed into the country under Mayorkas’s policies was arrested for strangling 20-year-old Kayla Hamilton to death in July 2022, only months after being released into the U.S.<sup>34</sup>

In fiscal year (FY) 2022, the U.S. Border Patrol encountered 98 aliens on the Terrorist Screening Dataset (TSDS) between the ports of entry.<sup>35</sup> In just the first seven months of FY2023, the Border Patrol has encountered 96 such aliens on the southern border and 2 on the northern border.<sup>36</sup> In FY 2021, the Border Patrol encountered 16 aliens on the TSDS.<sup>37</sup> By comparison, the Border Patrol had encountered only 3 in FY 2020.<sup>38</sup> Mayorkas must know that his policies have allowed some number of suspected terrorists to come into America’s communities.

Similarly, in FY 2022, CBP arrested 40,359 individuals with criminal convictions or who were wanted by law enforcement,<sup>39</sup> and in FY 2021, CBP made 28,213 such arrests.<sup>40</sup> By comparison, CBP arrested 18,609 criminal aliens in FY

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[ened-october-historic-number-go/](#). Many additional got-aways have crossed the southern border since this article was published.

<sup>32</sup> CBS This Morning, Interview of Secretary Alejandro Mayorkas, March 18, 2021; Brooke Singman, “Biden DHS Secretary Promises US will Not Expel Unaccompanied Minors,” Fox News, March 18, 2021, <https://www.foxnews.com/politics/biden-dhs-secretary-promises-us-will-not-expel-unaccompanied-minors>.

<sup>33</sup> U.S. Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>34</sup> Jon Feere, “MS-13 Member Suspect Entered as a UAC,” Center for Immigration Studies, January 22, 2023, <https://cis.org/Feere/Scoop-MS13-Murder-Suspect-Entered-UAC>.

<sup>35</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, “CBP Enforcement Statistics Fiscal Year 2023.”

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, “CBP Enforcement Statistics Fiscal Year 2023.”

<sup>40</sup> *Ibid.*

2020.<sup>41</sup> Mayorkas knows or should know that he is allowing an increasing number of dangerous criminals to pass over the border and infiltrate cities and towns across our nation, putting America's families at risk.

### ***Violations of INA Section 235***

Secretary Mayorkas's policy of treating illegal aliens encountered at our southern border as asylum seekers, while knowing most are not eligible for asylum under the law, and his policy of promptly releasing these same aliens into the U.S. without restraint<sup>42</sup> defy the mandatory detention and removal requirements of section 235 and treat the statute with contempt.

The results of these policies are predictable. In just his first year in office, Secretary Mayorkas authorized the release of at least 47,000<sup>43</sup> known illegal aliens who were required to be detained under the INA, and he did so with certain knowledge that not all detention resources were being used and that those released aliens would disappear into the United States and would not likely be removed. Objective observers can only conclude that that was his intention. As of early this year, CBP reported that it was paroling tens of thousands of aliens with alternatives to detention (ATD) each month, including over 95,000 in September 2022.<sup>44</sup>

DHS itself has reported that illegal aliens who are continuously detained by DHS are highly likely (97%) to be successfully removed from the U.S.,<sup>45</sup> while the

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<sup>41</sup> *Ibid.*

<sup>42</sup> Memorandum to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement; Troy Miller, Acting Commissioner, U.S. Customs and Border Protection; Ur Jaddou, Director, U.S. Citizenship and Immigration Services; Robert Silvers, Under Secretary, Office of Strategy, Policy, and Plans; Katherine Culliton-Gonzalez, Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties; and Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, from Alejandro N. Mayorkas, Secretary, "Subject: Guidelines for the Enforcement of Civil Immigration Law," U.S. Department of Homeland Security, September 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf> (hereafter "Mayorkas Memorandum, September 30, 2021").

<sup>43</sup> Anna Giaritelli, "47,705 Migrants Released with Instructions to Report to Ice Have Gone Missing Under Biden," *Washington Examiner*, January 11, 2022, <https://www.washingtonexaminer.com/news/47-705-migrants-released-with-instructions-to-report-to-ice-have-gone-missing-under-biden>.

<sup>44</sup> U.S. Customs and Border Protection, "Custody and Transfer Statistics FY2022," <https://www.cbp.gov/node/374051/printable/print>.

<sup>45</sup> Department of Homeland Security, "Fiscal Year 2021 Enforcement Lifecycle Report," November 2022, p. 3, [https://www.dhs.gov/sites/default/files/2022-12/2022\\_1114\\_plcy\\_enforcement\\_lifecycle\\_report\\_fy2021.pdf](https://www.dhs.gov/sites/default/files/2022-12/2022_1114_plcy_enforcement_lifecycle_report_fy2021.pdf); Department of Homeland Security, "Fiscal Year 2020 Enforcement Lifecycle Report," December 2020, pp. 17-18,

vast majority (82%) of those who are not removed directly by CBP or continuously detained by ICE end up remaining in the U.S. for years.<sup>46</sup> DHS has further reported that illegal aliens who are not removed within 12 months of being encountered are “rarely repatriated after that.”<sup>47</sup>

In March of this year, in a suit brought by the state of Florida, the U.S. District Court for the Northern District of Florida invalidated DHS’s “Parole Plus Alternatives to Detention” policy, concluding that it was an unlawful attempt to evade the mandatory detention requirements of section 235.<sup>48</sup>

In its opinion, the district court pointed out that even the witnesses for the Biden administration had acknowledged that “there is nothing inherently inhumane or cruel about detaining aliens pending completion of their immigration proceedings,” and the court found that detention “is the surest way”—in many cases, the only way—to guarantee that aliens “will not abscond” before the proceedings are finished.<sup>49</sup>

The court determined that the immigration policies pursued by the Biden administration, including the mass release of aliens, “were akin to posting a flashing ‘Come In, We’re Open’ sign on the southern border.”<sup>50</sup> This was an “appropriate analogy,” the court stated, “not only because it is a fair characterization of what” the administration is doing, but also because DHS had argued at trial that it “could not simply hang a ‘Closed’ sign on the border”—a claim the court found “disingenuous,” since federal law “specifically authorizes the President to ‘suspend the entry of all aliens’ whenever he finds that their entry would be ‘detrimental to the interests of the United States.’”<sup>51</sup>

According to the court, the evidence showed that the “unprecedented ‘surge’ of aliens that started arriving ... almost immediately after President Biden took office and that has continued unabated over the past two years is a predictable

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[https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Special\\_Reports/Enforcement\\_Lifecycle/2020\\_enforcement\\_lifecycle\\_report.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Special_Reports/Enforcement_Lifecycle/2020_enforcement_lifecycle_report.pdf).

<sup>46</sup> Fiscal Year 2021 Enforcement Lifecycle Report, p. 3.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Florida v. United States*, Case No. 3:21-cv-1066 (N.D. Fla. Mar. 8, 2023), <https://www.courtlistener.com/docket/60493921/157/state-of-florida-v-united-states/>.

<sup>49</sup> *Ibid.*, p. 8.

<sup>50</sup> *Ibid.*, p. 18.

<sup>51</sup> *Ibid.*, p. 18, footnote 12.

consequence of these actions.”<sup>52</sup> As the chief of the Border Patrol had testified at trial, such surges in immigration occur “when there are no consequences” to illegal entry and when aliens know “they will be released into the country.”<sup>53</sup> In this way, the court found, the Biden administration’s policies themselves had “incentivized” the mass influx of illegal migration to the U.S.<sup>54</sup>

DHS urged that the huge increase in the number of aliens being released was “attributable to something other than a change in policy (such as the post-pandemic increase in migration),” but the court found that claim “simply not credible” and “contrary to the weight of the evidence.”<sup>55</sup>

DHS also claimed that it was forced to release huge numbers of aliens because of a lack of sufficient detention capacity. This argument echoed Secretary Mayorkas’s own often-repeated refrain that our nation’s immigration system is “broken” because our laws, including section 235’s mandatory detention requirement, are outdated and were not designed to handle today’s immigration crisis. On that basis, Mayorkas and the Biden administration have asserted the ultra vires power to rewrite those laws.

But the district court in Florida found that, in contrast to the Trump administration, which had submitted budget requests for increased detention space, the Biden administration has been steadily closing detention facilities and reducing the appropriations requested for detention facilities. The court concluded that it was hard to take the claim of impossibility seriously when DHS had “elected not to use one of the tools provided by Congress” and had “continued to ask for less detention capacity.” As the court reasoned:

“The fact that DHS must make those ‘tough decisions’ does not mean that it has free rein to adopt policies that contravene the clear mandates in the INA or create ‘processing pathways’ that contort statutory language to effectuate its preferred policy of ‘alternatives to detention’ over actual detention.”<sup>56</sup>

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<sup>52</sup> *Ibid.*, pp. 18-19.

<sup>53</sup> *Ibid.*, p. 19.

<sup>54</sup> *Ibid.*, p. 21.

<sup>55</sup> *Ibid.*, p. 38.

<sup>56</sup> *Ibid.*, p. 12.

DHS also assured the court that “it is screening arriving aliens ... to determine if they are a public safety threat,” but the court found that “the more persuasive evidence establishes that DHS cannot reliably make that determination.” “DHS has no way to determine if an alien has a criminal history in his home country,” the court found, “unless that country reports the information to the U.S. government or the alien self-reports.” So DHS was “mainly only screening aliens at the border to determine if they have previously committed a crime *in the United States*”—a question of little to no value, since “many of these aliens are coming to the United States for the first time.”<sup>57</sup>

Following the court’s order, DHS attempted to put a variation of the challenged policy, relabeled “Parole with Conditions,” back into place. Florida quickly challenged it, and the district court entered an injunction blocking the replacement policy based on the reasoning of the court’s earlier decision.<sup>58</sup> DHS has now appealed both rulings to the Eleventh Circuit.

### ***Creating Unlawful Immigration Pathways Using the CBP One Mobile App***

In recent months, Secretary Mayorkas has shifted to an even more unlawful process of pre-registering aliens outside the U.S. for mass entry and release using the “CBP One” mobile app. Through this app, DHS has orchestrated the pre-registration of tens of thousands of these aliens, including with the assistance of non-governmental organizations (NGOs) and foreign governments.<sup>59</sup> The aliens who have pre-registered using the app are then left to find their way to a U.S. point of entry, including along the southern border, in many cases presumably still with the assistance of drug cartels or smugglers.

Contrary to the Secretary’s misleading rhetoric, this new process is not an “enforcement measure.”<sup>60</sup> Instead, it furthers and facilitates Mayorkas’s existing policies of non-enforcement. While it has allowed Mayorkas and the White House to claim an improvement in the crisis at the border and a lessening of the strain on Border Patrol agents between the ports, as a legal matter, the CBP One process has

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<sup>57</sup> *Ibid.*, p. 35 (emphasis in original).

<sup>58</sup> See *Florida v. Mayorkas*, Case No. 3:23-cv-9962 (N.D. Fla. May 16, 2023), Preliminary Injunction, <https://www.courtlistener.com/docket/67367309/30/state-of-florida-v-mayorkas/>.

<sup>59</sup> See Todd Bensman, *Biden’s Immigration Magic Trick*, Newsweek, January 24, 2023.

<sup>60</sup> See DHS Press Release, “Unlawful Southwest Border Crossings Plummet Under New Border Enforcement Measures,” January 25, 2023.

only *institutionalized* DHS's violations of law by creating a new channel for attracting and enabling an ever-increasing stream of illegal immigration in violation of INA sections 212 and 235, which now must be handled by CBP inspectors at ports of entry.

Through this channel, tens of thousands of aliens from all over the world continue to flow into the U.S. each month without the procedures and individualized assessments required by law—albeit now they are coming via official ports of entry. And they continue to be released *en masse* into the interior, either by parole or as asylum applicants.<sup>61</sup> Once released, most are still being transported surreptitiously by DHS or through the agency of NGOs to every part of our nation, with no consideration for the effects this dispersion is having on the safety and resources of local communities.

The illegal flow of aliens into the U.S. remains unabated and, in fact, is increasing,<sup>62</sup> while the appearance of a more orderly processing system gives Mayorkas a greater ability to conceal his actions and the effect of his policies from the American people.<sup>63</sup>

It is clear that DHS will be applying this mass-release, pre-registration process to many more aliens than the four national groups (Cubans, Haitians, Nicaraguans, and Venezuelans) cited in the Department's January 25 press release.<sup>64</sup>

In proposing its recent rule misleadingly entitled “Circumvention of Lawful Pathways,”<sup>65</sup> DHS announced that it intended to apply a rebuttable presumption that an alien is ineligible for asylum in the U.S. if the alien had traveled through a third

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<sup>61</sup> See Andrew R. Arthur, “What’s Biden Doing with Migrants at the Ports of Entry?,” Center for Immigration Studies, May 30, 2023, <https://cis.org/Arthur/Whats-Biden-Doing-Migrants-Ports-Entry>.

<sup>62</sup> See <https://datavisualizations.heritage.org/immigration/illegal-alien-encounters-surge-and-shift-under-biden/> (charts displaying the rising tide of illegal alien encounters at the U.S. border).

<sup>63</sup> See Mark Krikorian, “Biden hides the truth at the border—he’s letting in thousands,” *New York Post*, May 31, 2023, <https://nypost.com/2023/05/31/biden-hides-the-truth-at-the-border-hes-letting-in-thousands/>.

<sup>64</sup> *Ibid.* See Camilo Montoya-Galvez, “U.S. plans to admit nearly 40,000 asylum-seekers per month through mobile app,” *CBSNews.com*, May 31, 2023, <https://www.cbsnews.com/news/asylum-seekers-cbp-one-mobile-app-u-s-plans-admit-nearly-40000-monthly/>; Andrew R. Arthur, ‘CBP One’ App Will Have Real Blood on Its Metaphorical Hands, Center for Immigration Studies, January 26, 2023, <https://cis.org/Arthur/CBP-One-App-Will-Have-Real-Blood-Its-Metaphorical-Hands>.

<sup>65</sup> <https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-pathways>.



country on his way to the U.S. without seeking asylum protection unless one of several exceptions applies. Among the exceptions: the alien used the CBP One app to schedule an appointment for processing at a port of entry or the alien was unable to access the CBP One app because the app was not functioning properly or the alien had no mobile phone.

This rulemaking announcement confirms that DHS plans to rely on the CBP One channel as the main pipeline (or, as Mayorkas likes to say, “pathway”) through which it will unlawfully funnel into the U.S. the mass flow of aliens of any nationality that Mayorkas has described as “asylum seekers,” in addition to parolees.

For this reason, on May 23, 2023, the state of Texas filed a new lawsuit aimed at challenging the legality of DHS’s use of the CBP One app by challenging the “Circumvention of Lawful Pathways” rulemaking under the Administrative Procedure Act.<sup>66</sup> Similarly, 18 other states have filed a parallel suit in the U.S. District Court for the District of North Dakota, also challenging the Circumvention rule because of its key reliance on parole and the CBP One app—the so-called “orderly pathways” of immigration that DHS claimed in proposing the rule “are authorized separate from this rulemaking.”<sup>67</sup>

The indirect nature of the Texas and Indiana challenges to the CBP One process and the reliance on parole demonstrate how DHS under Secretary Mayorkas has persistently attempted to evade legal challenges to its immigration policies by not issuing those policies as formal agency actions that would be subject to immediate review in court. It is easy to see why: almost every time Mayorkas’s policies have been addressed in a court challenge, they have been rejected or condemned as unlawful. But through all his various judicial slap downs, Secretary Mayorkas remains a man on a mission, ever pushing forward the Biden administration’s open-border policies.

### ***Violations of INA Section 237***

Secretary Mayorkas has also restricted ICE personnel from initiating removal or deportation proceedings against most deportable aliens who are in the U.S. He

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<sup>66</sup> See Rebecca Santana, “Texas sues Biden administration over asylum rule, saying phone app encourages illegal immigration,” *APNews.com*, May 24, 2023, <https://apnews.com/article/texas-paxton-cbpone-immigration-border-asylum-5ad591deb956bb192f84c13b64620fc0>.

<sup>67</sup> *Indiana v. Mayorkas*, Case No. 1:23-cv-106 (D.N.D. 2023), Complaint, p. 34 (quoting 88 Fed. Reg. at 31,410), [https://ago.mo.gov/docs/default-source/press-releases/lawful-pathways-filed-complaint.pdf?sfvrsn=f7a3f46f\\_2](https://ago.mo.gov/docs/default-source/press-releases/lawful-pathways-filed-complaint.pdf?sfvrsn=f7a3f46f_2).

issued a directive, the “Mayorkas Memorandum,” ostensibly based on “prosecutorial discretion,” taking the position that the fact that an alien is “removable” under the immigration laws “should not alone be the basis of an enforcement action against” the alien.<sup>68</sup> And he authorized and encouraged ICE attorneys to misuse prosecutorial discretion to dismiss or administratively close cases to avoid pursuing deportations and removals.<sup>69</sup> These actions have contradicted the plain terms of INA section 237(a)(1).

Mayorkas’s enforcement (or, rather, non-enforcement) directives had the intended effect: During Fiscal Year 2021, ICE carried out only 59,000 deportations,<sup>70</sup> the lowest total since 1995, even though the number of illegal aliens apprehended reached record highs in FY 2021.

The U.S. District Court for the Southern District of Texas invalidated the Mayorkas Memorandum in relevant part in June 2022,<sup>71</sup> but Mayorkas later replaced it with a new ICE “prosecutorial discretion” directive<sup>72</sup> that appears, based on deportation numbers, to achieve much the same result, allowing most removable aliens to remain indefinitely in the U.S.

While the number of deportations in FY 2022 rose to 72,177 following the adverse court ruling,<sup>73</sup> that number was still historically low. In FY 2020, for example, ICE deported 185,884 aliens, itself an unusually low number because of the COVID-19 pandemic.<sup>74</sup> Despite Mayorkas’s claim that he prioritizes DHS

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<sup>68</sup> Mayorkas Memorandum, September 30, 2021.

<sup>69</sup> Memorandum for All OPA Attorneys from Kerry E. Doyle, Principal Legal Advisor, “Subject: Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion,” U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, April 3, 2022, [https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement\\_guidanceApr2022.pdf](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf).

<sup>70</sup> U.S. Immigration and Customs Enforcement, “ICE Annual Report Fiscal Year 2021,” March 11, 2022, p. 9, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2021.pdf>.

<sup>71</sup> *Texas v. United States*, No. 6:21-cv-0016 (S.D. Tex 2022)

<sup>72</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor,” <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>.

<sup>73</sup> U.S. Immigration and Customs Enforcement, “ICE Annual Report Fiscal Year 2022,” December 30, 2022, p. 18, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

<sup>74</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Annual Report Fiscal Year 2020*, December 23, 2020, p. 4, <https://www.ice.gov/doclib/news/library/reports/annual-report/iceReportFY2020.pdf>.

resources for the removal of the most serious criminal offenders, the number of removals of convicted felons dropped under his tenure from 36,000 in FY 2020 to 27,000 in FY 2021,<sup>75</sup> and his lax enforcement policies resulted in a 71% decline in removals of deportable aliens who came to ICE's attention as a result of a local criminal arrest.<sup>76</sup>

Secretary Mayorkas has championed all of these results publicly, touting that his policies have “fundamentally changed” interior immigration enforcement.<sup>77</sup> Indeed, Despite the court order vacating his underlying enforcement memorandum, Mayorkas has continued to encourage ICE attorneys to misuse prosecutorial discretion rather than prosecute cases, thereby ignoring Congress's will in section 237 and the intent of the court order.

### *De Facto Suspensions of the Laws*

Through these various policies, President Biden and Secretary Mayorkas have, in effect, arrogated to themselves a sweeping power to suspend key provisions of the immigration laws they are entrusted with faithfully enforcing. There is no justification for the Biden administration's lawlessness.

The Department of Justice has tried to defend Mayorkas's policies against challenge in court by arguing that he is acting within the scope of his enforcement discretion because of the extraordinary volume of illegal aliens attempting to enter the U.S., the humanitarian issues presented, and the Secretary's need to allocate and manage limited resources in response. But, as the U.S. District Court for the Northern District of Florida held, these arguments are unavailing.

It is Secretary Mayorkas's own actions that have attracted the record high number of inadmissible and deportable aliens to our border and that have enabled and facilitated the dispersion of this wave of illegal aliens into and throughout the U.S. Furthermore, he has closed down detention facilities and stopped cooperating with border states, thus making no effort to use the full scope of enforcement resources available to him. And, of course, the Biden administration's decisions to

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<sup>75</sup> Jessica M. Vaughan, “Interior Immigration Enforcement Decline Under Biden: State and Local Statistics,” Center for Immigration Studies, December 8, 2022, <https://cis.org/Report/Interior-Immigration-Enforcement-Decline-Under-Biden-State-and-Local-Statistics>.

<sup>76</sup> *Ibid.*

<sup>77</sup> Camilo Montoya-Galvez, “After 1 Year and Many Changes, Biden's Immigration Record Frustrates Opponents and Allies Alike,” *CBSNews.com*, updated January 20, 2022, <https://www.cbsnews.com/news/immigration-biden-first-year-title-42-ice-texas/>.

terminate the Remain in Mexico Program and to stop construction on the southern border wall have contributed greatly to the huge volume of asylum seekers who are subject to mandatory detention under INA section 235.

In requiring executive officers to carry out their legal duties “faithfully,” our Founders rejected any notion that the president or the heads of executive departments like Secretary Mayorkas could ever claim such power to suspend the laws they are responsible for enforcing when those laws are perfectly constitutional.

### ***Violation of INA Section 103***

Secretary Mayorkas has also acted in contravention of section 103(g) of the INA, which states:

“The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of [the Homeland Security Act].”<sup>78</sup>

Since before enactment of the Homeland Security Act in 2002, the Executive Office for Immigration Review within the Department of Justice has been the agency with jurisdiction to review asylum officers’ findings of credible fear. The Homeland Security Act retained that jurisdictional arrangement. Notwithstanding the clear requirements of section 103, Mayorkas approved the promulgation of an interim final rule asserting asylum officer jurisdiction over asylum officer’s findings of credible fear, removing immigration judges, ICE attorneys, and the adversarial process from credible fear asylum cases.<sup>79</sup> In the interim final rule, Mayorkas generally adopted the discussion in his notice of proposed rulemaking, where he

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<sup>78</sup> 8 U.S.C. § 1103(g)(1); H.R. 5005, Homeland Security Act of 2002, Public Law 107-296, 107th Congress, November 25, 2002.

<sup>79</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office for Immigration Review, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” Interim Final Rule, *Federal Register*, Vol. 87, No. 60 (March 29, 2022), pp. 18078–18226, <https://www.govinfo.gov/content/pkg/FR-2022-03-29/pdf/2022-06148.pdf>.

used his own policy-created border crisis and surge of asylum cases to justify a need to “streamline” the credible fear asylum process.<sup>80</sup>

Without an adversarial process, the predictable outcome of this statutory and jurisdictional violation will be increased grants of asylum by DHS, which will encourage even more illegal aliens to submit fraudulent asylum claims.

**Secretary Mayorkas Has Violated Section 235 of the Trafficking Victims Protection Reauthorization Act of 2008.**

Finally, it is no stretch to conclude that Secretary Mayorkas has acted in contravention of section 235 (entitled “Enhancing Efforts to Combat the Trafficking of Children”) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (the TVPRA).<sup>81</sup> Among other things, that provision commands the Secretary of Homeland Security, along with the Secretary of Health and Human Services (HHS), the Attorney General, and the Secretary of State, to “establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.”<sup>82</sup>

Every time a child who has been brought into the country under his lax enforcement policies has become the victim of abuse and exploitation by sex traffickers or other criminals, Mayorkas has failed faithfully to carry out his obligations under the TVPRA.<sup>83</sup>

Although he likes to label his policies “humane,” Mayorkas well knows (or has willfully blinded himself to the fact) that these policies have enticed an uncontrolled stream of illegal aliens to cross into the U.S., including a record number of unaccompanied children. In FY 2021, CBP encountered approximately 147,000

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<sup>80</sup> *Ibid.*, p. 18079. See U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office for Immigration Review, “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers,” Notice of Proposed Rulemaking, *Federal Register*, Vol. 86 (August 20, 2021), pp. 46906, 46907-46909.

<sup>81</sup> H.R. 7311, Public Law No. 110-457, 110th Cong., December 23, 2008, <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>.

<sup>82</sup> *Ibid.*, p. 35, 122 Stat. 5077.

<sup>83</sup> See Kelly Laco, “HHS ‘Knowingly’ Transferred Migrant Children to Criminals, Sex Traffickers, GOP Senators Charge,” Fox News, December 6, 2022, <https://www.foxnews.com/politics/hhs-knowingly-transferred-migrant-children-criminals-sex-traffickers-gop-senators>.

unaccompanied children,<sup>84</sup> and in FY 2022, more than 152,000.<sup>85</sup> By comparison, CBP encountered just over 33,000 in FY 2020.<sup>86</sup>

It appears evident that there has been insufficient care exercised by DHS and HHS in the handling and placement of migrant children and little or no adequate follow up to ensure that those children who have been granted entry and placed with guardians in the U.S. are not becoming the victims of abuse in violation of the TVPRA. Quite distressingly, there is a growing body of evidence suggesting that many are.<sup>87</sup>

One whistleblower from HHS recently testified before this Committee that tens of thousands of migrant children “are being trafficked through a sophisticated network” that starts in their home countries and continues when they are smuggled to a DHS port of entry and then delivered by the Biden administration to sponsors in the U.S.—some of whom “are criminals and traffickers and members of Transnational Criminal Organizations” who “view children as commodities and assets to be used for earning income,” which is “why we are witnessing an explosion of labor trafficking.”<sup>88</sup> She concluded that the U.S. government seems to have “become the middleman in a large scale, multi-billion-dollar, child trafficking operation run by bad actors seeking to profit off the lives of children.”<sup>89</sup>

Regrettably, Secretary Mayorkas is only making this horrible problem worse. Under his leadership, CBP has now ended the practice, introduced by the Trump administration, of conducting DNA testing of migrant families at the border to

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<sup>84</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> See Hannah Dreier, “As Migrant Children Were Put to Work, U.S. Ignored Warnings,” *New York Times*, April 17, 2023, <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>; Hannah Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *New York Times*, February 25, 2023 (updated February 28, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

<sup>88</sup> Testimony of Tara Lee Rodas, Presented to the Subcommittee on Immigration Integrity, Security, and Enforcement of the House Committee on the Judiciary, April 26, 2023, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/rodas-testimony.pdf>.

<sup>89</sup> *Ibid.*

identify instances of family fraud.<sup>90</sup> Without this testing, DHS will inevitably fail to catch cases—all too common—where child traffickers have paid or forced adult migrants to smuggle an unrelated child into the U.S. for abuse and exploitation.

## **Conclusion**

The long string of clear violations of law laid out above add up to something far more egregious than a mere zealous effort to push the bounds of statutory discretion. Rather, the Biden administration, with Secretary Mayorkas at the point, is obviously committed to a much vaster and more activist enterprise.

They are working every switch and lever to explode the established controls on immigration enacted by Congress and to outrun the latest judicial decree. The purpose is to construct all-new channels of their own design (visa-like “pathways”), crafted to achieve the maximum unrestrained inflow of extra-legal immigration for the duration of the president’s term in office. It is nothing short of a usurpation of law and congressional power by the executive.

And there is no true humanitarian objective in these policies. The victims of the enterprise include a sea of vulnerable migrants caught up in the horrendous realities of human chaos and exploitation under the grip of the cartels, the migrant children who are enslaved and abused within our own neighborhoods, and the untold cost on the everyday citizens of America whose communities are ravaged by violence and crime, strained by unforeseen economic burdens, and infested with fentanyl.

The picture is grim and disturbing, but I want to thank you, Mr. Chairman, for shining a bright light on these issues.

That concludes my statement, and I am happy to respond to questions from the Committee.

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<sup>90</sup> John Solomon, “Biden to end familial DNA testing at border, key deterrent to fraud and child trafficking,” *Just The News*, May 23, 2023, <https://www.sgtreport.com/2023/05/biden-to-end-familial-dna-testing-at-border-key-deterrent-to-fraud-and-child-trafficking/>.

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