

Congress of the United States
House of Representatives
Washington, DC 20515-0305

February 9, 2022

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Mayorkas,

Thank you for your response dated January 31, 2022, to my May 19, 2021, letter. The data that you provided in your response confirms what I have long suspected, which is that under your leadership the Department of Homeland Security (DHS) is failing to faithfully execute the laws passed by Congress.

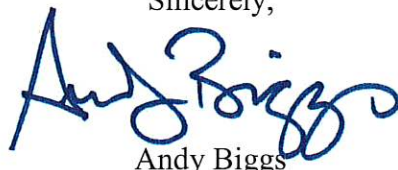
So that I can more fully understand the extent of the border crisis that you have created, please provide answers to the following questions by February 18, 2022.

1. On what specific authority in the INA is DHS releasing “applicants for admission” as defined in section 235(a)(1) of the INA, including illegal migrants apprehended by Border Patrol at the Southwest border?
2. On what specific authority in the INA is DHS issuing illegal migrants “Notices to Report”?
3. Does DHS consider the Fifth Circuit’s December 13, 2021, decision in *Texas v. Biden*, ___ F.4th ___ (2021) to be binding precedent with respect to its release of “applicants for admission” as defined in section 235(a)(1) of the INA, including illegal migrants apprehended by Border Patrol at the Southwest border? If it does not, explain why it does not consider that decision to be binding precedent.
4. Are “applicants for admission” as defined in section 235(a)(1) of the INA, including illegal migrants apprehended by Border Patrol at the Southwest border, who are paroled into the United States being released under section 212(d)(5)(A) of the INA, section 236(a)(2)(B) of the INA, or under some other provision in law? If it is some other provision, please provide the specific authority.
5. Are “applicants for admission” as defined in section 235(a)(1) of the INA, including illegal migrants apprehended by Border Patrol at the Southwest border, who are paroled into the United States being issued Notices to Appear? If any are not, please explain why they are not being issued Notices to Appear. Include citations to the INA and case law.
6. Does DHS require “applicants for admission” as defined in section 235(a)(1) of the INA, including illegal migrants apprehended by Border Patrol at the Southwest border, who are released by DHS into the United States — either on parole or with Notices to Report — to appear within 60 days in person at an ICE field office? For any aliens identified in the preceding sentence who are not required to appear at an ICE field office in person, does

ICE require them to check in telephonically, in writing, or in some other manner? If it is some other manner, please describe how those check-ins occur. Please state how many aliens have been required to report since March 21, 2021, in each manner.

7. How many “applicants for admission” as defined in section 235(a)(1) of the INA, including illegal migrants apprehended by Border Patrol at the Southwest border, who have been released into the United States on parole, with Notices to Appear, or with Notices to Report and who have failed to report as required have been (1) investigated; (2) questioned; (3) apprehended; (4) detained; (5) prosecuted; (6) been ordered removed; and (7) removed from the United States by ICE or any other agency of the U.S. government?
8. Do ICE attorneys seek removal orders for all “applicants for admission” as defined in section 235(a)(1) of the INA, including illegal migrants apprehended by Border Patrol at the Southwest border, who fail to appear at their initial master calendar hearings? If not, why not?
9. Does DHS consider aliens who fail to appear at removal hearings in immigration court or at required check-in appointments with ICE to be “flight risks”? If not, why not? If an alien fails to appear at a removal hearing in immigration court or at a required check-in appointment with ICE, does ICE open an investigation to locate and detain that alien? If not, why not?

Sincerely,



Andy Biggs

Member of Congress