

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

May 19, 2021

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

Dear Secretary Mayorkas:

During your testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs last week, you admitted that the Department is violating federal law by releasing inadmissible aliens into the interior of the United States. After initially claimed that each alien is given a Notice to Appear (NTA) for removal proceedings in front of an immigration judge before being released from custody, you later admitted they are not. While you ultimately revealed the truth, you are either woefully unaware of the unlawful actions taken by your department or you are willfully failing to enforce the law.

Aliens are being released from DHS custody without being issued NTAs and DHS is unreasonably expecting these illegal entrants to voluntarily report to ICE to receive a charging document and court date. This is fatuous and an abdication of your statutory obligation.

The Immigration and Nationality Act (INA) requires DHS to order inadmissible aliens who are arriving in the United States “removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under Section 208 [8 USCS § 1158] or a fear of persecution.”¹ Such person shall be referred to an immigration officer for a credible fear interview.² Only those aliens who establish a credible fear of persecution are eligible to remain in the United States, and they must be “detained for further consideration of the application for asylum.”³ All aliens who are unable to establish a credible fear of persecution shall be ordered removed “without further hearing or review.”⁴ This process is called “Expedited Removal” because Congress intended for prompt removal from the country of this class of arriving aliens. Detention while awaiting expedited removal is mandatory.

Additionally, the INA requires that applicants for admission who are “not clearly and beyond a doubt entitled to be admitted” into the United States and are not amenable for Expedited

¹ 8 U.S.C. 1225(b)(1)(A)(i).

² 8 U.S.C. 1225(b)(1)(A)(ii).

³ 8 U.S.C. 1225(b)(1)(B)(ii).

⁴ 8 U.S.C. 1225(b)(1)(B)(iii)(I).

Removal “shall be detained for a proceeding under section 240 [8 USCS § 1229a].”⁵ Again, detention is mandatory.

Notwithstanding very specific exceptions, the INA does not allow DHS to simply release aliens en masse into the interior of the United States without scheduling a hearing with the immigration courts. Thus, your decision to release hundreds of thousands of aliens into the United States without an NTA is a clear violation of the law.

On March 23, 2021, my colleagues and I wrote to you in response to media reports that CBP was releasing illegal aliens into the interior without issuing NTAs. In that letter we asked several questions to clarify those claims. Unfortunately, we have not received responses to those questions. Therefore, I once again request answers to those questions by the end of the week.

Additionally, based on your claim that you are seeing a “high rate” of aliens appearing at ICE offices to receive NTAs I request answers to the following questions.

- 1) How many aliens who were released from CBP custody without receiving an NTA have reported to ICE?
- 2) How many of those aliens have received an NTA?
- 3) You stated that “Individuals who do not appear are a priority of ours for apprehension in the service of border security.”
- 4) How many aliens who have not reported to ICE have been arrested by ICE?
- 5) How many of those aliens have been removed from the country?
- 6) Will you commit to using every resource and legal authority available to you to remove all the aliens who do not report to ICE as quickly as possible?

It is imperative that you immediately begin implementing the law, as enacted by Congress. Refer all aliens who indicate an intention to apply for asylum or state a fear of persecution for credible fear interviews, detain all aliens who establish a credible fear of persecution until their claims are heard by an immigration judge, and immediately remove all aliens who do not establish a credible fear of persecution as required by statute.

Sincerely,



Andy Biggs
Member of Congress

⁵ 8 U.S.C. 1225(b)(2)(A).