

Congress of the United States
Washington, DC 20515

May 25, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20528

Dear Secretary Mayorkas:

The Biden border crisis is the direct result of the Biden Administration's radical immigration policies and disrespect for the rule of law. Title 42 public health authority allows an administration to prohibit the entry of persons into the U.S. when it is in the public health interest to do so. While the Trump Administration successfully used Title 42 to prohibit the entry of aliens into the U.S. during the COVID-19 pandemic, the Biden Administration has begun granting exemptions to that prohibition. Because the Department of Homeland Security (DHS) refuses to disclose its criteria for granting these exemptions, we write to request this information.

The Trump Administration's use of Title 42 authority was appropriate and necessary.¹ As the pandemic continues to plague foreign countries, especially in Central America, Title 42 is even more critical to protect the health of Americans from COVID-19 variants and avoid undermining the recovery progress that has been made. Unfortunately, the Biden Administration has been chipping away at the effectiveness of this Title 42 authority by exempting aliens from the expulsion requirements.

On February 17, 2021, the Centers for Disease Control and Prevention (CDC) announced that it would exempt Unaccompanied Alien Children (UAC) from the Title 42 prohibition on entry.² That exception, in addition to the exemptions already in place for certain family units, allowed nearly 64,000 illegal aliens encountered along the southwest border in April 2021 to enter the U.S. instead of being expelled from the country.³ According to Customs and Border Protection data, over 151,000 illegal aliens encountered on the southwest border have been exempted from Title 42 expulsion since the beginning of the Biden Administration.

¹ Press Release, U.S. Dep't of Homeland Sec., Fact Sheet: DHS Measures on the Border to Limit the Further Spread of Coronavirus (Mar. 23, 2020), <https://www.dhs.gov/news/2020/10/19/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus>.

² Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination, 86 Fed. Reg. 9,942 (Feb. 17, 2021).

³ U.S. Customs and Border Protection, *U.S. Border Patrol Monthly Enforcement Encounters 2021: Title 42 Expulsions and Title 8 Apprehensions*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

Subsequently, on May 12, 2021, the Department of Homeland Security (DHS) issued the following statement attributable to a DHS spokesperson:

As the United States continues to enforce the CDC Order under its Title 42 public health authority, we are working to streamline a system for identifying and lawfully processing particularly vulnerable individuals who warrant humanitarian exceptions under the order. This humanitarian exception process involves close coordination with international and non-governmental organizations in Mexico and COVID-19 testing before those identified through this process are allowed to enter the country.⁴

In a subsequent staff briefing, DHS officials indicated that while it had granted only around 50 exceptions to the Title 42 expulsion protocol during the first week, that number rose to about 40 to 50 exceptions *per day* in the second week. DHS officials also explained that certain unidentified non-governmental organizations (NGOs) were helping DHS to identify potential aliens for Title 42 exceptions. Despite repeated requests, DHS officials declined to disclose the exact criteria it was using to grant Title 42 exceptions. DHS since confirmed that it conceded to American Civil Liberties Union demands to admit “approximately 250” aliens a day, or 7,750 per month, based on the criteria.⁵ Given the Biden Administration’s seeming propensity to weaken Title 42 expulsions authority and increase the number of aliens not subject to Title 42 expulsion, we can only assume the number of aliens admitted based on the criteria will increase substantially.

The criteria under which DHS granted these exceptions are necessary for Congress to know to perform our oversight of the Biden Administration’s immigration enforcement. Not only could these exceptions incentivize additional illegal entries in the U.S., but once paroled into the country, these foreign nationals can seek employment authorization. In addition, because DHS is working with NGOs to identify potential aliens for Title 42 exceptions, it appears that DHS is willing to provide more information about immigration policies to these NGOs than to the United States Congress.

As the Ranking Members of the House committees of relevant jurisdiction, we are entitled to know what criteria you believe to warrant a humanitarian exception from Title 42 expulsion protocol as well as the NGOs with which you are working to determine eligibility of those seeking the exception. For those reasons, please provide us with the specific criteria that the Biden Administration is using to identify and process “particularly vulnerable individuals who warrant humanitarian exceptions” to the Title 42 public health authority order, and the names of the NGOs with which you are working on this issue. Please provide these materials as soon as possible but by no later than 5:00 p.m. on May 28, 2021.

⁴ U.S. Dep’t of Homeland Security, Office of Public Affairs, *DHS Improves Process for Humanitarian Exceptions to Title 42* (May 12, 2021).

⁵ Camilo Montoya-Galvez, *US Commits to Admitting 250 Asylum Seekers Per Day in Concession to Advocates* CBSNEWS (May 18, 2021), <https://www.cbsnews.com/news/u-s-to-admit-250-asylum-seekers-per-day-in-concession-to-advocates/>.

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If you have any questions about this request, please contact House Judiciary Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member
House Committee on the Judiciary



John Katko
Ranking Member
House Committee on Homeland Security



James Comer
Ranking Member
House Committee on Oversight and Reform

cc: The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary

The Honorable Bennie Thompson, Chairman, House Committee on Homeland Security

The Honorable Carolyn Maloney, Chairwoman, House Committee on Oversight and Reform