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United States Senate
COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

December 5, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave. S.E.
Washington, D.C. 20528-0525

Dear Secretary Mayorkas:

I write today to request information regarding the plan for Title 42's termination. As you are aware, the U.S. Department of Justice (DOJ) requested a stay of Judge Sullivan's recent order to allow the Federal government five weeks to prepare for Title 42's termination. This stay and the Federal government's continued use of the order under Title 42 will terminate on December 21, 2022. To date, the U.S. Department of Homeland Security (DHS) has failed to provide Congress and the public with clear projections regarding the migration surge that will occur once the Title 42 order is terminated and the government's efforts to enforce the law at the southern border once the Title 42 order is terminated.

On March 17, 2022, your staff held a briefing with staff from the authorizing committees of Congress. During that briefing, a briefer from the DHS Office of Intelligence & Analysis (I&A) shared with the authorizing committees the following projections:

- Tens of thousands of migrants were already located south of the border in Mexico and could surge to the U.S./Mexico border within hours or days of Title 42's termination;
- Hundreds of thousands of migrants were located throughout central and south Mexico and could surge to the U.S./Mexico border within days to weeks of Title 42's termination; *and*
- Millions of migrants and displaced persons were located in south Mexico and in the Northern Triangle and could make their way to the U.S./Mexico border within weeks to a month of Title 42's termination.

After the March 17, 2022 briefing, DHS no longer relied on the I&A projections shared during that briefing and I&A no longer participated in briefings with HSGAC or the authorizing committees regarding Title 42's termination. Instead, DHS began to rely on a series of projections developed by the Office of Immigration Statistics (OIS), which stated that 18,000 migrants would cross the border per day after Title 42 was terminated.

DHS recently shared 25 pages of information with the Senate Homeland Security and Governmental Affairs Committee (HSGAC) regarding its efforts to "secure and ensure order at the southwest border." Buried within that information, DHS stated: "The metric of 18,000 encounters per day was designed for planning purposes to describe a scenario in which termination of Title 42 on a target date would cause encounters of noncitizens from numerous countries to surge to levels beyond the highest ever observed.

It does not reflect the number of encounters CBP anticipates seeing.”¹ This information appears to contradict all prior public statements made by DHS officials regarding the migration surge that will occur after the Title 42 order is terminated, including statements made under oath by DHS officials during Congressional hearings on Title 42’s termination.²

During the injunction that barred CBP from terminating the Title 42 order, I visited the Southern Border Coordination Center (SBCC) to better understand the Federal government’s posture regarding the end of Title 42. While I was at the SBCC, multiple officials told me that DHS was ready to manage the migration surge when the litigation was resolved and Title 42 was terminated. One official specifically noted that DHS was planning and ready as if Title 42 was terminated “tomorrow.” Since my visit to the SBCC, Judge Sullivan terminated Title 42. In court filings after Judge Sullivan’s ruling, DOJ requested a five-week delay in implementing the ruling, noting that “DHS requires a short period of time to prepare for the transition from Title 42 to Title 8 processing [...]”³ This statement, which was contained in a court filing, suggests that DHS was not, in fact, ready for Title 42’s termination “tomorrow” and again calls into question a number of statements DHS has made to me and to other Senators and members of Congress regarding Title 42’s termination.

Finally, a few weeks prior to Judge Sullivan’s order terminating Title 42, DHS stood up a new program for Venezuelan nationals in which it would parole 24,000 Venezuelans who applied online and expel under Title 42 any Venezuelan who attempted to cross the U.S./Mexico border between ports of entry. This program could only exist due to the way that the Title 42 order impacted regulations and the statutory scheme around asylum, and the termination of Title 42 will likely end this program moving forward. During briefings with authorizing committee staff, DHS has indicated that it is aware of the program’s reliance on Title 42 and will intend to process Venezuelan nationals “under Title 8 authorities” when the Title 42 order is terminated. The *New York Times* recently reported that there were “tens of thousands” of Venezuelan nationals located between the Darien Gap and U.S./Mexico border.⁴ It is likely that these Venezuelan nationals will surge the border once the Administration’s use of Title 42 ends on December 21, 2022.

For the reasons above, I am very concerned that DHS has not been forthright with me and with Congress its projections of the surge that will occur when Title 42 is terminated and its enforcement posture moving forward. DHS has yet to brief Congress regarding its plans on December 21, 2022, leaving us with a series of contradictory statements and vague policy initiatives to rely on while the border careens toward a truly historic crisis. DHS has had an additional six months to plan for the termination of Title 42 during the intervening litigation, but we have not heard a word about how DHS has used the additional time to plan for Title 42’s termination.

To better understand DHS’s projections and plans for Title 42’s termination, I ask the following questions:

¹ Responses to Post-Hearing Questions for the Record from Blas Nuñez-Neto, Question 21 (*Securing and Ensuring Order on the Southwest Border: Hearing before the S. Comm. on Homeland Sec. and Gov’t Affairs.*, 117th Cong. (May 5, 2022)).

² “Sir, the DHS Office of Immigration Statistics has published projections that show an increase in irregular migration post-Title 42.” (*Securing and Ensuring Order on the Southwest Border: Hearing before the S. Comm. on Homeland Sec. and Gov’t Affairs.*, 117th Cong., at 107 (May 5, 2022)).

³ *Huisha-Huisha v. Mayorkas*, Civ. A. No. 21-100, (D.D.C. 2021), Defs.’ Mot. For Temp. Stay, ECF No. 166.

⁴ See David Shortell and Julie Turkewitz, *Venezuelans Who Left Everything Behind Are Stuck South of the U.S. Border*, *New York Times*, (Oct. 24, 2022) <https://www.nytimes.com/2022/10/24/world/americas/venezuela-migrants-biden-mexico.html>.

1. When will DHS provide a member-level briefing regarding its plans following Judge Sullivan's order?
2. When will DHS provide a staff-level briefing regarding its plans following Judge Sullivan's order?
3. What are DHS's actual projections for the migration surge that will occur when Title 42 is terminated on December 21, 2022? Please share at your earliest convenience all intelligence products and any other documents that underlie your response to this question.
4. What is DHS's actual plan for enforcing the law when Title 42 is terminated on December 21, 2022? Please provide as much specificity as possible in answering this question.
5. What are DHS's plans for the Venezuela Program when Title 42 is terminated on December 21, 2022?
 - a. Will the Venezuelan nationals who had previously been expelled under Title 42 under this program be allowed to claim asylum and be processed under Title 8 once Title 42 is terminated on December 21, 2022?
 - b. Is DHS negotiating with other governments to find a way to expel, remove, or return Venezuelan nationals and other nationals of other countries with whom we do not have diplomatic agreements? If so, how long have these negotiations been occurring and what is the status of those negotiations?
6. Why does DHS need five additional weeks to plan for the termination of Title 42 if, as I was told at the SBCC in July 2022, DHS was ready for Title 42's termination "tomorrow"?
7. Will the government be appealing Judge Sullivan's decision?

In light of the extraordinary circumstances regarding Judge Sullivan's ruling and the imminent end of the Title 42 order, I request your response by no later than COB, December 9, 2022.

In God We Trust,



James Lankford
Ranking Member
Subcommittee on Government Operations
and Border Management