

Congress of the United States
Washington, DC 20515

September 5, 2023

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

Dear Secretary Mayorkas:

During your July 27, 2023, testimony before the House Judiciary Committee, I inquired why the U.S. Department of Homeland Security (DHS) continues to unlawfully abuse the parole statute under the guise of addressing a historic, self-inflicted crisis at our nation's Southern Border. Through this abuse of parole authority, large numbers of inadmissible aliens are being systematically granted unlawful entry into the country, which is a clear violation of the law.

As you are aware, the Immigration and Nationality Act (INA) sets forth limited authority to temporarily parole some otherwise inadmissible aliens into the United States under certain, narrow conditions. Such authority may only be exercised "on a case-by-case basis for urgent humanitarian reasons or significant public benefit."¹ After the issuance of parole, inadmissible aliens are then eligible for work authorization and are free to travel the country.

Instead of only using this authority on a rare "case-by-case basis" after a finding of a legitimate humanitarian reason or significant public benefit, DHS has been abusing it. DHS has granted parole to over a million inadmissible aliens, including those apprehended by U.S. Border Patrol as well as those who present themselves at ports of entry after making an appointment through the CBP One™ mobile application.² DHS has also created unlawful categorical parole programs, resulting in illegal migration flows that resemble broad, legal categories established by Congress. For example, earlier this year, DHS began to parole up to 30,000 inadmissible Cuban, Haitian, Nicaraguan, and Venezuelan nationals per month.³ The creation of these unlawful parole programs has not reduced illegal immigration, but merely shifted the processing of inadmissible aliens to ports of entry. According to the data, the aggregate number of encounters occurring both at and between ports of entry remains at record high levels.

To address these unlawful practices driving the border crisis, Florida's Attorney General sued DHS in the Northern District of Florida, correctly asserting that the "Parole + ATD" policy for those apprehended by Border Patrol between ports of entry violates existing federal law. U.S. District Judge T. Kent Weatherell, who found it unlawful, described the policy as follows:

¹ INA § 212(d)(5)(A)

² George Fishman, "Parole with Benefits," Center for Immigration Studies, April 13, 2023, <https://cis.org/Report/Parole-Benefits>.

³ Arthur, Andrew R. "Biden's CHNV Parole Program - Ripe for Human Exploitation." CIS.Org, Center for Immigration Studies, 25 Aug. 2023, <https://cis.org/Arthur/Bidens-CHNV-Parole-Program-Ripe-Human-Exploitation>.

The evidence establishes that the [Biden Administration] has effectively turned the Southwest Border into a meaningless line in the sand and little more than a speed bump for aliens flooding into the country by prioritizing “alternatives to detention” over actual detention and by releasing more than a million aliens into the country—on “parole” or pursuant to the exercise of “prosecutorial discretion” under a wholly inapplicable statute—without even initiating removal proceedings.

In an act of defiance, DHS then attempted to rebrand and sidestep this decision by creating “Parole with Conditions.” Fortunately, Judge Weatherell also enjoined that unlawful practice.

Additionally, under the “Parole with Conditions” revision, illegal aliens were paroled into the U.S. with the expectation that they would check in within 60 days and receive a Notice to Appear (NTA), which kicks off removal proceedings. Judge Weatherell noted that only 18 percent of the aliens released under this policy were issued an NTA and placed in removal proceedings. The additional 82 percent are awaiting the issuance of an NTA or roaming American communities with no electronic monitoring. Unsurprisingly, 40 percent of these aliens never reported as required. Releasing illegal border crossers en masse and refusing to detain or even monitor them—especially with the effective Intensive Supervision Appearance Program at the Department’s disposal—is unconscionable.

If industrial scale abuse of parole authority while engaging in mass catch-and-release of illegal aliens with no electronic monitoring isn’t egregious enough, DHS is concealing the number of parole issuances each month. The Appendix contains two Southern Border charts that are frequently updated on the U.S. Customs and Border Protection (CBP) website for public information purposes. Appendix A displays the custody and transfer statistics at ports of entry and Appendix B displays Border Patrol encounters between them. The charts display different categories regarding processing dispositions at the Southern Border. However, when it comes to ports of entry there is no processing disposition for parole. This is outrageous considering that arriving aliens at ports of entry can only be released into the country through issuance of parole. Moreover, only displaying issuance of an NTA does not tell the entire story—a staggering 99 percent of those who arrive at a port of entry with a CBP One™ appointment are promptly processed with an NTA and then unlawfully paroled into the country. ⁴This is an attempt to conceal the truth from the American people, and it must stop.

In light of the foregoing, I hereby request that all future CBP, OFO, and USB monthly reports beginning in August 2023 include either 1) a parole issuance disposition or 2) a caveat to explain that issuance of an NTA at a port of entry is accompanied by a grant of parole.

⁴ Shaw, Adam, *Over 99% of Migrants Who Have Sought Title 42 Exception via CBP One App Were Approved*, Fox News, FOX News Network, 14 Apr. 2023, www.foxnews.com/politics/99-percent-migrants-sought-title-42-exception-cbp-one-app-approved.

These facts will allow us to provide more accurate, transparent information to the American people and will enable data-driven oversight of the Biden Administration's unlawful use of parole.

Your prompt attention to this matter is appreciated.

Sincerely,

A handwritten signature in blue ink, reading "Laurel M. Lee". The signature is fluid and cursive, with the first name "Laurel" being more prominent and the last name "Lee" following in a similar style.

Laurel M. Lee
Member of Congress

Appendix A

OFO Monthly Southwest Border Credible Fear Inadmissibles by Disposition

Disposition	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23
EXPEDITED REMOVAL-CREDIBLE FEAR (ERCF)¹	205	211	216	159	183	174	149	598	1,024
NOTICE TO APPEAR (NTA)²	21,353	22,660	25,266	22,713	21,389	24,268	22,877	30,287	40,280
NOTICE TO APPEAR (NTA)-PERSON RELEASED	0	0	0	0	0	0	0	0	0
NOTICE TO APPEAR (NTA)-PERSON DETAINED	0	0	0	0	0	0	0	0	0
VISA WAIVER PROGRAM (VWP)-REMOVAL-LIMITED REVIEW³	0	0	0	0	0	0	0	0	0
VISA WAIVER PROGRAM (VWP)-REFUSAL LIMITED REVIEW³	1	1	0	0	0	0	0	0	3
STOWAWAY-LIMITED REVIEW³	0	0	0	0	0	0	0	0	0
Total Credible Fear Inadmissibles	21,310	22,575	25,177	22,504	21,071	24,040	22,561	29,908	40,340

¹Includes subjects who indicated a desire to seek asylum or a fear of persecution in Office of Field Operations' (OFO) custody at a port of entry. OFO refers all such claims to USCIS for a credible fear interview. Credible fear may be claimed at any time prior to removal.

² This number reflects instances where OFO exercises its discretion and issues a Notice to Appear (NTA) to initiate removal proceedings before an immigration judge. This does not include NTAs issued at the discretion of other DHS components with authority to issue NTAs. the event of being processed for removal with an NTA, individuals have up to one year to seek asylum while in proceedings before the immigration judge.

³ The term "limited review" refers to the process of an immigration judge considering claims of US citizenship, Lawful Permanent Residence, Asylum or Refugee status.

Appendix B

USBP Monthly Southwest Border Encounters by Processing Disposition

The processing disposition decision related to each apprehension is made on a case-by-case basis. As dispositions are subject to change throughout the process, the data below does not necessarily reflect final dispositions or removals in all cases.

Processing Disposition	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23
Notice To Appear/Own Recognizance (NTA-OR)	20,928	16,730	9,778	17,830	14,725	25,843	65,607	69,014	35,793
Paroles ¹	68,843	90,540	130,577	5,208	25	7	42	8,847	3
Notice to Report (NTR)	0	0	0	0	0	0	0	0	0
Expedited Removal (ER)	11,413	6,369	6,532	15,845	11,856	10,952	8,618	23,405	16,931
Reinstatement of Prior Order of Removal	2,156	2,037	2,056	2,252	2,471	2,518	2,263	4,815	5,258
Warrant of Arrest/Notice To Appear - (Detained)	19,290	20,558	14,200	14,378	22,777	30,448	20,882	13,988	17,485
Voluntary Return	2,226	2,154	7,291	7,274	2,250	2,624	2,047	19,124	23,783
MPP	0	0	0	0	0	0	0	0	0
Other ²	225	218	232	214	271	282	381	612	292
Total Title 8 Apprehensions	125,081	138,606	170,666	63,001	54,375	72,674	99,840	139,805	99,545

¹Subjects enrolled in multiple programs are only counted once based on the following order: PACR, ACA, HARP, MPP

²Processing dispositions may include subjects that do not yet have a final disposition at the time the data was collected or subjects processed under the visa waiver program, turned over to, etc.