

# Congress of the United States

## Washington, DC 20510

April 25, 2022

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

Dear Secretary Mayorkas,

We write to address your actions to dismantle the security of our nation's southern border and disregard for the enforcement of U.S. immigration laws. Your actions have willingly endangered American citizens and undermined the rule of law and our nation's sovereignty. Your failure to secure the border and enforce the laws passed by Congress raises grave questions about your suitability for office.

Your expedited and repeated rejection of President Trump's successful Migrant Protection Protocols (MPP) (a.k.a., the "Remain in Mexico policy") demonstrates your willingness to embrace an open-borders agenda that undermines America's safety.

Despite pending litigation that ultimately resulted in a federal court requiring continued execution of MPP,<sup>1</sup> you issued a June 1, 2021 memorandum attempting to terminate the program. Even after the United States Supreme Court declined to reverse the lower court's decision,<sup>2</sup> you inexplicably issued *another* memo laying out plans to terminate the program.<sup>3</sup> Additionally, evidence shows that although you have, on paper, restarted MPP, you have not been administering the program in good faith, as required by the federal court order.<sup>4</sup>

Your attempts to unilaterally reverse policy in ways a federal court has repeatedly found in violation of the Administrative Procedures Act, as well as 8 U.S.C. §1225, shows a willful disregard for the law and the principles of separation of powers. You have been specifically instructed by the court to implement the protocol in good faith or take new agency action that complied with the law. You have done neither.

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<sup>1</sup> *Federal Judge's Ruling on Remain-in-Mexico Policy*, SCRIBD, <https://www.scribd.com/document/520115982/Federal-judge-s-ruling-on-Remain-in-Mexico> (last visited Mar. 18, 2022).

<sup>2</sup> U.S. Supreme Court, Order in Pending Case, Biden, President of U.S., Et Al. V. Texas, Et Al. Aug. 24, 2021, [https://www.supremecourt.gov/orders/courtorders/082421zr\\_2d9g.pdf](https://www.supremecourt.gov/orders/courtorders/082421zr_2d9g.pdf).

<sup>3</sup> Memorandum from Secretary Alejandro Mayorkas, Termination of the Migrant Protection Protocols (Oct. 29, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1029\\_mpp-termination-memo.pdf](https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf).

<sup>4</sup> Andrew Arthur, 'Remain in Mexico' Update – and Support for MPP from an Unlikely Source, CENTER FOR IMMIGRATION STUDIES (Jan. 6, 2022), <https://cis.org/Arthur/Remain-Mexico-Update-and-Support-MPP-Unlikely-Source>.

This callous disregard for the judiciary and willful refusal to properly apply the law raises questions about your commitment to protecting the homeland. Indeed, the Fifth Circuit has stated that your approach is as “unlawful as it is illogical.”<sup>5</sup>

Additionally, despite an ongoing, unprecedented border crisis, you have willfully ignored laws passed by Congress requiring construction of physical barriers along the southern border. Rather than faithfully executing the law, you instead unilaterally terminated existing contracts for the construction of border barriers. In fiscal year 2021, U.S. Customs and Border Protection (CBP) recorded nearly 2 million illegal aliens trying to cross the southern border into the United States.<sup>6</sup> These numbers included individuals whose names appeared on the terrorist watchlist, and individuals from adversarial nations, such as Russia and China. Not only have your actions compromised the security of our nation and endangered American citizens, but they have also wasted billions in taxpayer dollars.<sup>7</sup> Congress has authorized and appropriated funds to secure the southern border; it is not within your power to simply decide the power of the purse now belongs to the Secretary of Homeland Security.

The historic crisis at our southern border is set to worsen greatly due to the announced rescission of Title 42, which will bring a tidal wave of illegal immigrants across our southern border and overwhelm the already overworked and understaffed agents of the U.S. Border Patrol. The well-resourced cartels, gang members, human traffickers, and drug smugglers will exploit this crisis to further endanger American citizens.

We call on you to immediately take all legal and necessary actions at your disposal - of which there are many - to secure the southern border, rectify the dangerous policies this administration has put in motion over the past year, and bring your agency into compliance with the laws passed by the United States Congress. To that end, please provide an explanation to the following questions within the next 30 days:

1. Do you agree that section 235 (b)(1) and 235 (b)(2) of the Immigration and Nationality Act mandates that inadmissible aliens shall be detained, including those who have entered illegally?
  - a. If you believe you can release them, under what authorities are you releasing those individuals?

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<sup>5</sup> *State of Texas v. Biden*, Docket No. 21-10806 (5<sup>th</sup> Cir. Aug. 16, 2021)

<sup>6</sup> *Southwest Land Border Encounters*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited Mar. 18, 2022).

<sup>7</sup> STAFF OF S. SUBCOMM. ON GOVERNMENT OPERATIONS AND BORDER MANAGEMENT, COMM. ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, 117<sup>TH</sup> CONG., REP. TITLED PRESIDENT BIDEN IS WASTING BILLIONS BY NOT BUILDING THE BORDER WALL, [https://www.hsgac.senate.gov/imo/media/doc/GOBM%20Interim%20Report%20on%20Wall\\_Final.pdf](https://www.hsgac.senate.gov/imo/media/doc/GOBM%20Interim%20Report%20on%20Wall_Final.pdf).

2. Section (2)(a) of the Secure Fence Act of 2006 requires you to “achieve and maintain operational control” over the southern border. Operational control is defined as “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.” Please provide details on how the Department is in compliance with Section (2)(a) of the Secure Fence Act of 2006.
3. How much has it cost the Department of Homeland Security to cancel, pause, or otherwise halt construction of physical barriers along the southern border authorized and appropriated by law?

We look forward to hearing detailed, prompt answers to these questions. Ultimately, you have a constitutional obligation to use all means available to protect our nation’s borders. Current law requires you to maintain operational control of the southern border and detain illegal aliens. You continue to fail to do so. This raises significant questions about your commitment to securing our Homeland and the oath you took when taking office.

Sincerely,



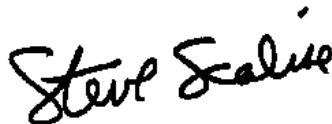
Brian Babin, D.D.S.  
Co-Chairman, House Border Security Caucus



Jim Banks  
Chairman, Republican Study Committee



Kevin McCarthy  
Republican Leader



Steve Scalise  
Republican Whip



Elise M. Stefanik  
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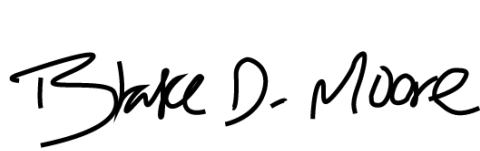
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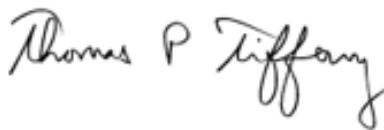
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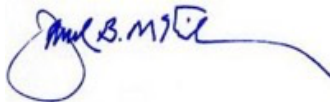
Gregory F. Murphy, M.D.  
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Dan Crenshaw  
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Pete Sessions  
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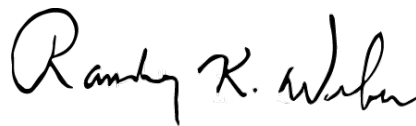
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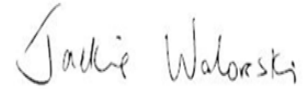
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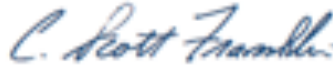
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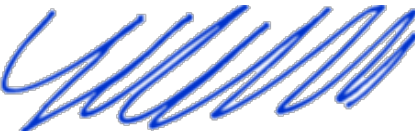
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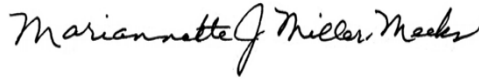
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Michael Guest  
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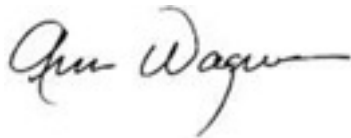
Scott Fitzgerald  
Member of Congress



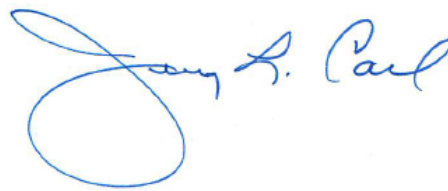
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