

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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March 20, 2023

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

Dear Secretary Mayorkas:

The Committee on Oversight and Accountability continues to investigate the Biden Administration's creation of and failure to resolve the worst border crisis in American history. You made recent remarks implying that "the vast majority" of illegal aliens released from Department of Homeland Security (DHS) custody passed an initial threshold credible fear screening. Your statements misrepresent DHS's own data and perpetuates an incorrect narrative about how the Administration processes illegal border crossers for release into the United States. The Committee requests documents and information to understand DHS policies with respect to credible fear interviews.

During a February 18, 2023, interview with Chris Wallace,¹ you implied that "the vast majority" of illegal aliens who are released from DHS custody first receive and pass a credible fear screening before they are released into the country. You stated:

The vast majority of those individuals have not sought to evade law enforcement, but have actually surrendered themselves to law enforcement and made a claim for relief under our laws... And so they make their claims, and the initial threshold for those claims under the law is lower than the ultimate asylum standard.

While a credible fear screening is what the law would contemplate,² DHS's own data contradict your statements. Only a fraction of the illegal aliens DHS personnel apprehend receive a credible fear screening prior to being released into the country.

¹ *Who's Talking to Chris Wallace?* Interview with Alejandro Mayorkas, CNN (Feb. 18, 2023).

² See 8 U.S.C. § 1225(b)(1)(A)(ii) ("...and the alien indicates either an intention to apply for asylum...or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer..."); see also 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that an alien has a credible fear of persecution... the alien shall be detained for further consideration of the application for asylum.").

According to U.S. Customs and Border Protection (CBP) data, more than 140,000 of the 172,116 Title 8 apprehensions made by U.S. Border Patrol agents in December 2022 resulted in an individual's release into the country.³ Yet according to U.S. Citizenship and Immigration Services (USCIS), only 5,001 aliens were referred to that component for credible fear screenings that month.⁴ The numbers for other months similarly represent only a fraction of total releases. Because of contradictory data posted on various DHS websites, however, it is impossible to know the extent of DHS's catch and release policies. But it is clear, that instead of referring illegal aliens to USCIS for a credible fear screening, your policy in most circumstances is to simply release illegal aliens into the country.

To assist the Committee in understanding DHS's catch and release policies and its limited use of credible fear interviews, please provide the following documents and information, covering the time period January 20, 2021 to the present, as soon as possible but not later than April 3, 2023:

1. All documents and communications regarding the number of illegal aliens encountered at the border and processed under Title 8 who indicated an intent to apply for asylum or expressed a fear of persecution in the event of their return;
2. All documents and communications regarding the number of illegal aliens identified in response to request number 1 who were referred for a credible fear screening;
3. All documents and communications related to the number of illegal aliens identified in response to request number 2 who received a positive credible fear determination;
4. All documents and communications related to the number of illegal aliens identified in response to request number 3 disaggregated by whether they were detained during the pendency of any application for asylum, paroled into the United States, released with a Notice to Appear, released on recognizance, or released with instructions to report to U.S. Immigration and Customs Enforcement (ICE) for further processing (Notice to Report);
5. All documents and communications related to the number of illegal aliens identified in response to request number 2 who received a negative credible fear determination;

³ *Custody and Transfer Statistics FY2023*, U.S. CUSTOMS AND BORDER PROTECTION (U.S. Border Patrol-Dispositions and Transfers Dec. 2022), available at <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

⁴ *Semi-Monthly Credible Fear and Reasonable Fear Receipts and Decisions 2022*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Time period 12/1/2022-12/15/2022 and 12/16/2022-12/31/2022), available at https://www.uscis.gov/sites/default/files/document/reports/Congressional_Semi-Monthly_Credible_and%20Reasonable_Fear_Report%20-%20Dec%2016%202021%20to%20Dec%2031%202022.csv.

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6. All documents and communications related to the number of illegal aliens identified in response to request number 5, disaggregated by whether they were removed from the United States, paroled into the United States, released with a Notice to Appear, released on recognizance, or released with instructions to report to ICE for further processing (Notice to Report);
7. All documents and communications regarding the number of illegal aliens encountered at the border and processed under Title 8 who did not indicate an intent to apply for asylum or did not express a fear of persecution in the event of their return;
8. All documents and communications regarding the number of illegal aliens identified in response to request number 7 disaggregated by whether they were removed from the United States, paroled into the United States, released with a Notice to Appear, released on recognizance, or released with instructions to report to ICE for further processing (Notice to Report);
9. All documents and communications regarding the number of illegal aliens encountered at the border and processed under Title 8 who were referred to the Department of Justice for prosecution for a violation of 8 U.S.C. § 1325 (improper entry by alien) or 8 U.S.C. § 1326 (reentry of removed aliens).

To arrange for the delivery of responsive documents or ask any related follow-up questions, please contact Committee on Oversight and Accountability Majority Staff at (202) 225-5074. Attached are instructions for producing the documents and information to the Committee.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



Eric Burlison
Member of Congress



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability