

Congress of the United States

Washington, DC 20510

December 13, 2022

The Honorable Joseph R. Biden Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20502

Dear President Biden:

We have a crisis at our southern border. Never before in our nation's history have we experienced this scope and scale of illegal border crossings, and we remain concerned that your administration has not provided sufficient support or resources to the men and women of the Department of Homeland Security (DHS) who are tasked with maintaining border security. We are committed to enacting bipartisan legislation that will allow DHS to effectively implement policies and programs that have been revealed as critical to maintaining operational control over the southern border, and do not involve paroling large numbers of migrants into the United States to undergo months- or years-long processes. These negotiations will take time. In the interim, we urge you to do everything within your power to extend the Centers for Disease Control and Prevention (CDC's) Title 42 order beyond the looming December 21st deadline until Congress can act.

While admittedly imperfect, termination of the CDC's Title 42 order at this time will result in a complete loss of operational control over the southern border, a profoundly negative impact on border communities, and significant suffering and fatalities among the migrants unlawfully entering the United States.¹ In May 2022, DHS Secretary Mayorkas stated that he was anticipating as many as 18,000 unlawful crossings per day once Title 42 was lifted.² Based on recent court filings, DHS is almost completely reliant on Title 42 to control migration from Mexico and the Northern Triangle: the vast majority of Mexicans, Guatemalans, Hondurans, and Salvadorans encountered by U.S. Border Patrol along the border in October 2022 were expelled under Title 42 rather than processed under Title 8.³ Furthermore, your administration's new migration enforcement process for Venezuelans depends on the availability of Title 42.⁴

As long as Title 42 remains our only effective tool for controlling unlawful migration—along with the expectation of its imminent rescission—pressure will continue to build on the southern

¹ See Priscilla Alvarez, *First on CNN: A record number of migrants have died crossing the US-Mexico border*, CNN (Sept. 7, 2022, 3:53 p.m.), <https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html>.

² Olafimihan Oshin, *DHS preparing for as many as 18,000 migrants per day after lifting of Title 42*, Mayorkas says, THE HILL (May 1, 2022, 9:55 a.m.), <https://thehill.com/homenews/sunday-talk-shows/3472980-dhs-preparing-for-as-many-as-18000-migrants-per-day-after-lifting-of-title-42-mayorkas-says/>.

³ *State of Louisiana v. Centers for Disease Control & Prevention*, No. 6:22-cv-00885 (W.D. La. Nov. 16, 2022), ECF No. 165, available at <https://storage.courtlistener.com/recap/gov.uscourts.lawd.188754/gov.uscourts.lawd.188754.165.0.pdf>.

⁴ Rafael Bernal, *DHS says its Venezuelan Title 42 expansion is working*, THE HILL (Oct. 21, 2022, 7:21 p.m.), <https://thehill.com/latino/3699154-dhs-says-its-venezuelan-title-42-expansion-is-working/>.

border. A recent article in the *New York Times* stated that “waves of Venezuelans have left South America as word has spread that the United States had no easy way to keep most of them out and would allow them to enter the country and seek asylum,” and that “[n]early all have passed through the Darién Gap.”⁵ Despite the administration’s reliance on Title 42 to maintain control, however, the CDC attempted to rescind the Title 42 order in April 2022,⁶ and after being preliminarily enjoined from doing so by Judge Robert Summerhays, appealed Judge Summerhays’ decision to the 5th Circuit.⁷


Now, we are less than two weeks away from the termination of the Title 42 order as a result of separate decision issued by Judge Emmet Sullivan on November 15, 2022.⁸ While we appreciate that DHS sought a stay of Judge Sullivan’s decision in order to facilitate a transition period, a mere five weeks is completely inadequate to prepare for a massive influx of migrants when the infrastructure and policies are not in place to expeditiously remove those with invalid claims for asylum or other forms of relief. We are also concerned that aside from filing a notice of appeal weeks after Judge Sullivan’s decision, DHS has not outlined a viable plan to maintain operational control of the southern border. This situation is untenable, and we must work together to keep in place DHS’s authority to quickly expel migrants until an acceptable set of alternative policies and resources is put into place.

We hope that you will embrace this opportunity for decisive action to prevent the situation at the southern border from deteriorating further, and we look forward to continuing our work with DHS and your administration on a permanent, bipartisan solution to this problem.

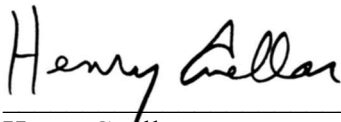
Sincerely,



Joe Manchin III
United States Senator



John Cornyn
United States Senator



Henry Cuellar
Member of Congress



Tony Gonzales
Member of Congress

⁵ David Shortell & Julie Turkewitz, *Venezuelans Who Left Everything Behind Are Stuck South of U.S. Border*, NEW YORK TIMES (Oct. 24, 2022), <https://www.nytimes.com/2022/10/24/world/americas/venezuela-migrants-biden-mexico.html?auth=login-google1tap&login=google1tap>.

⁶ Centers for Disease Control & Prevention, *CDC Public Health Determination and Termination of Title 42 Order*, U.S. DEP’T HEALTH & HUMAN SERVS. (Apr. 1, 2022), <https://www.cdc.gov/media/releases/2022/s0401-title-42.html>.

⁷ *Louisiana v. Centers for Disease Control & Prevention*, Case. No. 22-30303 (5th Cir. July 25, 2022), Doc. No. 00516406617.

⁸ *Huisha-Huisha v. Mayorkas*, Case. No. 1:21-cv-00100 (D.D.C. Nov. 15, 2022), ECF No. 165, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225870/gov.uscourts.dcd.225870.165.0_3.pdf.