

United States Senate
WASHINGTON, DC 20510

May 3, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear President Biden:

We write today to implore you to reverse your decision to end the Title 42 public health order, set to expire on May 11. According to the Department of Homeland Security's own estimates, border surges in response to the termination of the Title 42 order could reach 13,000 encounters with illegal immigrants *a day*.¹ This is untenable and will exacerbate what is already a national security and humanitarian disaster on our southern border.

Over the past three years, the Title 42 order has been a lifeline to the men and women of Border Patrol, who have been working heroically 24 hours a day to secure our southern border amid the worst border crisis in our lifetimes. Even with Title 42 in place, illegal crossings at the border have been at all-time highs. U.S. Customs and Border Protection (CBP) reported 2.3 million encounters on the southern border in fiscal year 2022, the most ever in a single fiscal year.² After another 1.2 million encounters in just the first 6 months of fiscal year 2023,³ this unprecedented deluge in encounters with illegal aliens shows no signs of abating.

We shudder to think about how much worse the situation at the border would have been over the past three years had it not been for the deterrent effect of Title 42. Since the initial order was issued in March 2020, the authority has been used 2.7 million times, including 1.5 million times in just the past 18 months.⁴ Of the 2.3 million encounters in fiscal year 2022, 1 million were processed under Title 42.⁵

Reverting back to removal solely under Title 8 without increased enforcement will be insufficient to gain control of the southern border. In fiscal year 2022, ICE Enforcement and Removal Operations secured only 108,650 removal orders in immigration cases and only conducted 72,177 removals,⁶ a small fraction of the 1.3 million encounters not subject to Title 42. Most of the rest of the aliens not processed under Title 42 or removed under Title 8 have been released into the United States.

¹ *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11,704, 11,705 (Feb. 23, 2023), <https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-pathways>.

² U.S. Customs and Border Protection, *Southwest Land Border Encounters*, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ ICE ANNUAL REPORT: FISCAL YEAR 2022 (Dec. 30, 2022), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

The “Circumvention of Lawful Pathways” proposed rule that your administration has issued will not solve this problem.⁷ A rebuttable presumption of asylum ineligibility is a weak response to the rampant and ongoing abuse of our asylum system. Nothing in this rule prevents aliens from making frivolous asylum claims. Instead, under the terms of the rule, aliens are encouraged to schedule a time to present at a port of entry through the CBP One mobile application, after which time many, if not most, will subsequently claim asylum. As the proposed rule itself noted, “most migrants who are initially deemed eligible to pursue their claims ultimately are not granted asylum in the subsequent EOIR removal proceedings.”⁸ Whether done through the CBP One mobile app or not, this gaming of our asylum system is a major pull factor that is causing the border crisis in the first place, and until your administration has a serious plan to address that, the authority Title 42 gives will still be necessary.

Our border remains under assault. The resources of CBP remain under tremendous strain. The introduction of 13,000 encounters every day to this crisis would be the equivalent of throwing gasoline on an already raging fire.

We encourage you to seize this moment to secure the United States’ southern border.

Sincerely,

















⁷ *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11,704, 11,705 (Feb. 23, 2023), <https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-pathways>.

⁸ *Id.* at 11705.

John Kennedy

Tom Tillis

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