

Congress of the United States
House of Representatives
Washington, DC 20515-2502

July 21, 2022

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AND NONPROLIFERATION

The Honorable Alejandro Mayorkas
Department of Homeland Security
300 7th St. SW
Washington, DC 20528

RECEIVED
By ESEC at 11:24 am, Jul 22, 2022

Dear Secretary Mayorkas,

We write with grave concern regarding the Department of Homeland Security’s (DHS) failure to properly enforce federal law involving the unlawful presence of immigrants in the United States. As you know, 8 USC § 1182(a)(9)(B)(i) explicitly prohibits any immigrant from obtaining a visa or being admitted into the United States if:

- (1) the immigrant was unlawfully present in the United States for more than 180 days and again seeks admission into the country within 3 years after the immigrant’s voluntary departure; or
- (2) the immigrant was unlawfully present in the United States for more than 1 year and again seeks admission into the country within 10 years after the immigrant’s departure or removal.

This federal law has been in effect for over 25 years. However, on June 24, 2022, U.S. Citizenship and Immigration Services (USCIS) determined a new and unprecedented interpretation of the language, announcing that even if an immigrant returns to the United States, “with or without authorization, during the statutory 3-year or 10-year period,” they may be admitted into the country. Further, this guidance states that an immigrant’s location and manner of return to the United States during the statutory 3-year or 10-year ban are now “irrelevant for purposes of determining inadmissibility.”¹ This policy guidance is directly and incomprehensibly antithetical to the letter and purpose of this law.

Our southern border is in complete and utter disarray. Since February 2021, over 2.97 million migrants have attempted to illegally cross our nation’s southern border, and these drastic numbers continue to accelerate. In 2021, the number of migrant encounters at the southern border increased by 271% compared to 2020.² In 2022, more immigrants have been encountered at the border each month than the record numbers of last year.³ Throughout this catastrophe, we have seen human

¹ U.S. Citizenship and Immigration Services. June 24, 2022. “Policy Alert. SUBJECT: INA 212(a)(9)(B) Policy Manual Guidance.” <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220624-INA212a9B.pdf>

² U.S. Customs and Border Protection. Last modified June 15, 2022. “Southwest Land Border Encounters.” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

³ Ibid.

smugglers lead countless migrants through the deadly Rio Grande River,⁴ thousands of these individuals living in stick huts under highway overpasses in 100 degree heat,⁵ and most recently, dozens of migrants found dead in an abandoned tractor-trailer.⁶ Instead of taking immediate action to support our U.S. Customs and Border Protection (CBP) personnel and institute policies to disincentivize further illegal immigration, DHS is now stating that violating our federal laws is “irrelevant.”

With our border in shambles and our CBP front-line personnel exhausted and demoralized,⁷ the American people deserve to know your rationale for instituting this policy change, which one former USCIS Director, Emilio Gonzalez, called, “sheer craziness.”⁸ Therefore, we request you provide clear and direct answers to the following questions by Friday, August 12, 2022:

- 1) The USCIS Policy Alert states that “USCIS has not previously issued guidance on this specific issue,” and this new interpretation of 8 USC § 1182(a)(9)(B)(i) is based on two non-binding court cases. Why, after over 25 years of this statute being in effect, did USCIS feel it was necessary to devise a new interpretation of this language?
- 2) When crafting this new interpretation, did USCIS take into account the unprecedented and continuously increasing number of migrant encounters at the southern border?
- 3) If the catastrophic conditions at the southern border were considered, is it DHS’s opinion that this new interpretation will increase or decrease the number of migrants attempting to enter the United States unlawfully?
- 4) Under this new interpretation, it is now “irrelevant” whether an illegal immigrant returns to the United States, “with or without authorization,” during the period when they are statutorily barred from entry. Is it DHS’s opinion that this interpretation will incentivize or disincentivize illegal immigrants from complying with the statutory ban?

⁴ Peter van Agtmael. April 19, 2021. “Night Crossings: Scenes From the U.S.-Mexico Border.” *The New York Times*. <https://www.nytimes.com/2021/04/19/us/migrants-texas-border-scenes.html>

⁵ James Dobbins, Eileen Sullivan, and Edgar Sandoval. September 16, 2021. “Thousands of Migrants Huddle in Squalid Conditions Under Texas Bridge.” *The New York Times*. <https://www.nytimes.com/2021/09/16/us/texas-migrants-del-rio.html>

⁶ James Dobbins, Miriam Jordan, and J. David Goodman. June 28, 2022. “51 Migrants Dead After Overheated Truck is Abandoned in Texas.” *The New York Times*. <https://www.nytimes.com/live/2022/06/28/us/texas-migrants-dead>

⁷ Adam Shaw, Bill Melugin, and Houston Keene. April 21, 2022. “Border Patrol warns of ‘all-time low’ morale as migrant numbers surge, Title 42 end looms.” *Fox News*. <https://www.foxnews.com/politics/border-patrol-morale-migrant-numbers-surge-title-42-end-looms>

⁸ Stephen Dinan. July 5, 2022. “DHS erases barrier to legal status for some illegal immigrants.” *The Washington Times*. <https://www.washingtontimes.com/news/2022/jul/5/dhs-erases-barrier-legal-status-some-illegal-immig/>

Due to the severity of the crisis at our southern border, we look forward to your immediate and unambiguous response.

Sincerely,



Ann Wagner
Member of Congress



Dan Crenshaw
Member of Congress



Brian Mast
Member of Congress



Jeff Van Drew
Member of Congress



Mayra Flores
Member of Congress



Vern Buchanan
Member of Congress



Jake Ellzey
Member of Congress



Carlos Gimenez
Member of Congress



U.S. Citizenship
and Immigration
Services

October 7, 2022

The Honorable Ann Wagner
U.S. House of Representatives
Washington, DC 20515

Dear Representative Wagner:

Thank you for your July 22, 2022, letter to the U.S. Department of Homeland Security. Secretary Mayorkas asked that I respond on his behalf.

As noted in your letter, U.S. Citizenship and Immigration Services (USCIS) recently issued policy guidance on inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (INA), and more specifically, the effect of returning to the United States during the statutory 3-year or 10-year period after departure or removal. Under this policy guidance, a non-citizen who again seeks admission more than 3 or 10 years after the relevant departure or removal is not inadmissible under section 212(a)(9)(B) of the INA even if the non-citizen returned to the United States, with or without authorization, during the statutory 3-year or 10-year period.¹

Prior to issuing this policy guidance, USCIS had not issued policy guidance on this specific issue in a policy memorandum, the Adjudicator's Field Manual (AFM), or USCIS Policy Manual (PM). This policy guidance is designed to ensure efficient and consistent adjudication in cases involving this ground of inadmissibility and enable the government to preserve significant resources. In formulating the policy guidance, USCIS considered the effects of the policy on all DHS components, and USCIS believes this policy guidance represents the best interpretation of the statute.

With respect to migrant encounters along the U.S. border, DHS does not anticipate this policy guidance will significantly increase or decrease the number of non-citizens attempting to enter the United States unlawfully.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive separate, identical responses. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

¹ Note however, that the manner in which the non-citizen returned to the United States during the statutory 3-year or 10-year period may result in the accrual of a new period of unlawful presence or result in inadmissibility under other grounds.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish.

Ur M. Jaddou
Director