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Secretary Alejandro Mayorkas
Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, D.C. 20528

Dear Secretary Mayorkas:

From April 2020 to April 2021, we lost an estimated 101,078 Americans to drug overdose.¹ It was the first time in United States history that estimated overdose deaths exceeded 100,000 for any 12-month period.² And the numbers keep rising, with the likely toll around 112,000 for the period between May 2022 and May 2023.³ These deaths represent more than mere statistics. The men and women who lost their lives to overdose were fathers and mothers, sons and daughters, neighbors, colleagues, and friends. They were made in the image of God, and God had a plan for each of them. But drugs, particularly fentanyl, cut short those plans, robbing families of treasured time and Kentucky of untapped potential. I have grave concerns about how a wide-open southern border is contributing to this crisis and the Department of Homeland Security's (DHS) failure to mount an effective response.

I. Background

Fentanyl is the primary cause of overdose deaths in the United States, contributing to

¹ F.B. Ahmad, et al., *Provisional Drug Overdose Death Counts*, NATIONAL CENTER FOR HEALTH STATISTICS (Oct. 11, 2023), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

² *Drug Overdose Deaths in the U.S. Top 100,000 Annually*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Nov. 17, 2021), https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm.

³ See *supra* note 1.

nearly 73% of overdose deaths in Kentucky⁴ and around 67% nationwide.⁵ The potency of fentanyl cannot be overstated.⁶ It is 50 times more powerful than heroin and 50 to 100 times more potent than morphine.⁷ Fentanyl is strong and cheap to produce and is a popular ingredient to mix with other illicit drugs, rendering them more powerful and less expensive.⁸ Today, around one-third of all illicit pills are laced with fentanyl, meaning users often have no idea that they are consuming such lethal poison.⁹

Most fentanyl is not made in the United States. Communist China and Mexican cartels work in tandem to target and poison the American people. Chinese operators have historically shipped fentanyl to the United States through international mail.¹⁰ But their use of direct mail shipments has fallen behind a new principal source of illicit fentanyl.¹¹ Today, Mexico supplies most of the fentanyl that appears in the United States.¹² Mexican cartels manufacture fentanyl in clandestine laboratories with precursor chemicals sourced mainly from China.¹³ The cartels then smuggle the finished product across our southern border.¹⁴

⁴ See *2021 Overdose Fatality Report*, KY. OFFICE OF DRUG CONTROL POLICY (May 3, 2022) at 1, available at [https://odcp.ky.gov/Reports/2021%20Overdose%20Fatality%20Report%20\(final\).pdf](https://odcp.ky.gov/Reports/2021%20Overdose%20Fatality%20Report%20(final).pdf).

⁵ *Synthetic Opioid Overdose Data*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last updated June 6, 2022), <https://www.cdc.gov/drugoverdose/deaths/synthetic/index.html>.

⁶ See *Fentanyl Facts*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last updated Feb. 23, 2022), <https://www.cdc.gov/stopoverdose/fentanyl/index.html>.

⁷ *Department of Justice Announces Results of Enforcement Surge to Reduce the Fentanyl Supply Across the United States*, DEPARTMENT OF JUSTICE (Sept. 27, 2022), <https://www.justice.gov/opa/pr/department-justice-announces-results-enforcement-surge-reduce-fentanyl-supply-across-united> [hereinafter *Results of Enforcement Surge*]; *Fentanyl Drug Facts*, NATIONAL INSTITUTE ON DRUG ABUSE (June, 2021), <https://nida.nih.gov/publications/drugfacts/fentanyl>.

⁸ See *Dose of Reality: Get the Facts on Opioids*, WISCONSIN DEPARTMENT OF HEALTH SERVICES (last updated Apr. 13, 2023), <https://www.dhs.wisconsin.gov/opioids/facts.htm>; *Fentanyl Facts*, *supra* note 6.

⁹ Rhitu Chatterjee, *Teen drug overdose deaths rose sharply in 2020, driven by fentanyl-laced pills*, NPR (Apr. 12, 2022), <https://www.npr.org/sections/health-shots/2022/04/12/1092309418/teen-drug-overdose-deaths-rose-sharply-in-2020-driven-by-fentanyl-laced-pills>.

¹⁰ *Combating the Opioid Crisis: Exploiting Vulnerabilities in International Mail*, U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS (Jan. 24, 2018), available at <https://www.hsgac.senate.gov/imo/media/doc/Combating%20the%20Opioid%20Crisis%20-%20Exploiting%20Vulnerabilities%20in%20International%20Mail1.pdf>.

¹¹ *China Primer: Illicit Fentanyl and China's Role*, CONGRESSIONAL RESEARCH SERVICE (last updated Sept. 28, 2023), available at <https://crsreports.congress.gov/product/pdf/IF/IF10890>.

¹² *Trends in Mexican Opioid Trafficking and Implications for U.S.-Mexico Security Cooperation*, CONGRESSIONAL RESEARCH SERVICE (last updated Dec. 9, 2022), available at <https://crsreports.congress.gov/product/pdf/IF/IF10400>.

¹³ *China Primer*, *supra* note 11; *2020 National Drug Threat Assessment*, U.S. DEP'T. OF JUSTICE DRUG ENFORCEMENT ADMINISTRATION, (Mar. 2021) at 7, 17–18, available at https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

¹⁴ *Id.* at 16.

Drug smuggling occurs in various places and ways. Some traffickers hire U.S. citizens to smuggle fentanyl on their bodies or in trucks. As you have noted, the majority of fentanyl “is sought to be smuggled through the ports of entry and tractor-trailer trucks and passenger vehicles.”¹⁵ Other drug dealers transport their narcotics via fleets of narco-submarines.¹⁶ And in May 2022, U.S. authorities discovered a cartel tunnel with electricity, ventilation, and reinforced walls that ran from Tijuana, Mexico, to San Diego.¹⁷ The tunnel extended for nearly 2,000 feet and included an operational rail track for running cocaine, heroin, and methamphetamine.¹⁸ The track could have moved fentanyl as well.

In fiscal year 2022, the U.S. government seized over 14,000 pounds of fentanyl.¹⁹ According to some estimates, that is enough to kill nearly ten times the population of the United States.²⁰ As of August, Customs and Border Protection had seized around 25,600 pounds of fentanyl in fiscal year 2023.²¹ That is more than an 80% increase from fiscal year 2022. It was therefore no surprise that the United States Department of Justice recently called Mexican cartels producing and moving fentanyl “[t]he most urgent threat to our communities, our kids, and our families.”²²

These facts and stories illustrate how DHS under your leadership has failed to perform its fundamental duty to “maintain operational control over the . . . borders of the United States[,]” including “the prevention of all unlawful entries into the United States . . . [and] entries [of] narcotics.”²³ DHS must change course and honor its mission to protect us from communist China and Mexican cartels flooding our country with unprecedented amounts of fentanyl.

¹⁵ Nicole Sganga and Camilo Montoya-Galvez, *Fentanyl seizures rise at U.S.-Mexico border – here’s why*, CBS NEWS (Feb. 3, 2023), <https://www.cbsnews.com/news/fentanyl-seizures-rise-u-s-mexico-border-heres-why/>.

¹⁶ Michael James, *Colombian ‘Prince of Submersibles’ gets 20 years for smuggling kilos of coke into US with narco-submarines*, USA TODAY (May 8, 2023).

¹⁷ *Authorities discover narco-tunnel on U.S.-Mexico border*, REUTERS (May 17, 2022), <https://www.reuters.com/world/americas/authorities-discover-narco-tunnel-us-mexico-border-2022-05-17/>.

¹⁸ *Id.*

¹⁹ *Drug Seizure Statistics FY2023*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics> (last visited Oct. 12, 2023).

²⁰ *One Pill Can Kill*, U.S. DRUG ENFORCEMENT ADMINISTRATION, <https://www.dea.gov/onepill> (last visited May 1, 2023) (basing estimates on one kilogram killing 500,000 people, where 14,000 pounds equals 6,350 kilograms; this amounts to about 3.2 billion deaths, and the U.S. population is about 331 million).

²¹ *See supra* note 19.

²² *Results of Enforcement Surge*, *supra* note 7.

²³ Note to 8 U.S.C. § 1701.

II. DHS's Failures in Addressing the Fentanyl Crisis

A. DHS must end its soft-on-crime approach and reinstate effective Trump Administration policies to prevent cartels from exploiting the disaster at the southern border.

U.S. Customs and Border Protection (CBP) falls under the leadership of DHS. As the largest law enforcement agency at DHS and the primary federal law enforcement agency charged with border security, CBP should be laser focused on protecting Americans from the illicit fentanyl that cartels move into our country. Instead, CBP remains distracted and overwhelmed by chaotic and unmanageable immigration.

Since President Biden took office, around 8 million illegal border crossings have occurred, with most occurring at the southern border.²⁴ This number of crossings exceeds the individual populations of 38 different states and is almost double the population of Kentucky.²⁵ With so much of CBP's resources devoted to these unlawful entries, the agency cannot adequately combat fentanyl trafficking.²⁶ Rodney Scott, former Chief of the United States Border Patrol, recently testified:

[T]he cartels have mastered the tactic of using the endless flow of illegal aliens to overwhelm law enforcement to create controllable gaps in border security. In many areas they simply coordinate a massive illegal entry. . . . These tactics are all designed to elicit the desired law enforcement response and to create a controllable gap in border security. These gaps are then exploited to smuggle anything they want into the US. . . . [And] [e]ach policy decision that results in an illegal alien being released into the US is free advertisement for the cartel. This ensures that they will have an endless wave of humans eager to pay them and be used as distractions as long as they have a chance of getting into America.²⁷

Mr. Scott also testified that “the current administration has directed border patrol to prioritize immigration processing over enforcement.”²⁸ In other words, you prioritize “transporting . . . aliens to processing centers”²⁹ over capturing and removing aliens who

²⁴ Bethany Blankley, *Illegal border crossers since 2021 total more than individual populations of 38 states*, THE CENTER SQUARE (Jun. 22, 2023), https://www.thecentersquare.com/national/article_81293caa-1050-11ee-8619-734bf91c6025.html.

²⁵ *Id.*

²⁶ See Summary of Testimony of Rodney Scott before the House Judiciary Subcommittee on Immigration Integrity, Security and Enforcement (Sept. 14, 2023), *available at* <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/scott-testimony.pdf>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

enter the United States unlawfully. This is sheer insanity.

Your policies incentivize crime. DHS's parole and alternatives-to-detention (ATD) programs advertise to the world that foreign nationals can come to the border, claim asylum, and be released into America while waiting for a hearing on the merits of their asylum claim. Most wait for years, and few ever show up for a hearing. Because of your misguided ATD policies, cartels actually coach "illegal aliens . . . to seek out Border Patrol and claim asylum."³⁰ Cartels make around \$13 billion a year from their human smuggling operations alone.³¹

Your agency admitted in July that, in accordance with its ATD policies, DHS releases illegal aliens into the United States with just a handshake agreement.³² In exchange for their release, they promise only to check in with Immigration and Customs Enforcement (ICE) within 60 days. Of a test sample, "[m]ore than 40% of the migrants never checked in at all. Of the rest, ICE failed to issue a notice to appear—[i.e., an] immigration summons—in more than two-thirds of the cases."³³

Aliens who are unauthorized to enter the United States must not be released for an indefinite amount of time waiting for an asylum hearing, to which they may never appear or even be summoned. Unless your goal is to undermine American immigration laws, illegal aliens should be detained and processed for removal as quickly as possible. In short, DHS must dispel any notion to those entering the United States without authorization that claiming asylum will grant them entry into the interior of the country.³⁴

Additionally, DHS should reinstate the Trump administration's Migrant Protection Protocols (*i.e.*, Remain in Mexico) under the discretion granted by 8 USC 1225(b)(2)(C). At a minimum, DHS should apply the Remain in Mexico policy to immigrants whose asylum claim has been denied but is undergoing an appeal. Otherwise, migrants may remain in America for years while appealing the denial. Currently, the average wait

³⁰ *Id.*

³¹ Miriam Jordan, *Smuggling Migrants at the Border Now a Billion-Dollar Business*, THE NEW YORK TIMES (July 25, 2022), <https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html>.

³² See Stephen Dinan, *Vanishing act: DHS admits that 40% of catch-and-release migrants disappeared*, THE WASHINGTON TIMES (July 19, 2023), <https://www.washingtontimes.com/news/2023/jul/18/vanishing-act-dhs-admits-40-catch-and-release-migr/>

³³ *Id.*

³⁴ Similarly, DHS must stop the wholesale grant of work permits to hundreds of thousands of migrants, many of whom entered the United States unlawfully. This blanket approach only incentivizes further lawbreaking. Camila Montoya-Galvez, *U.S. offers nearly half-a-million Venezuelan migrants legal status and work permits following demands from strained cities*, CBS NEWS (Sept. 20, 2023), <https://www.cbsnews.com/news/venezuelan-migrants-thousands-legal-status-work-permits-u-s/>.

time for an asylum hearing is about 4.3 years.³⁵

B. CBP has failed to capitalize on available technology to detect fentanyl and fentanyl precursors smuggled through ports of entry.

Most fentanyl and fentanyl precursors enter our country through ports of entry.³⁶ These drugs are often smuggled in passenger and commercial vehicles driven by people who are authorized to cross the border.³⁷ Unfortunately, CBP searches only a fraction of the vehicles for illegal drugs.³⁸ Although CBP seized a record amount of fentanyl in fiscal year 2023,³⁹ the seizures constitute nothing more than inventory shrinkage to the cartels. In fact, some estimates suggest that the nearly 25,600 pounds that CBP seized in fiscal year 2023 represents merely 25% of the fentanyl that cartels smuggled into America during that time.⁴⁰ CBP must do better.

Congress believes that scanning 72 percent of commercial trucks and 40 percent of passenger vehicles entering from Mexico will help stem this crisis.⁴¹ But meeting these objectives requires software and artificial intelligence capable of sorting through millions of images quickly.⁴² Congress has appropriated funding for exactly that kind of technology.⁴³

While CBP has increased its use of such technology, the agency's work is far from complete.⁴⁴ "Along the border, the administration is struggling to deploy . . . sophisticated scanning systems," noted one reporter in December 2022.⁴⁵ The House Appropriations Committee went further, "chastis[ing] the [CBP] for its failures, saying

³⁵ Rosa Flores, *The US asylum backlog is nearing 1.6 million, the highest number on record*, CNN (Dec. 26, 2022), <https://www.cnn.com/2022/12/26/us/asylum-backlog-highest-record/index.html>.

³⁶ See Joel Rose, *Who is sneaking fentanyl across the southern border? Hint: it's not the migrants*, NPR (Aug. 9, 2023), <https://www.npr.org/2023/08/09/1191638114/fentanyl-smuggling-migrants-mexico-border-drugs>.

³⁷ See *id.*

³⁸ Around the end of 2018, an estimated 228,000 cars and trucks were entering the United States from Mexico each day, but only 6 percent of commercial trucks and 1 percent of passenger vehicles were scanned with non-intrusive scanning technology. Nick Miroff, et al., *Cause of death: Washington faltered as fentanyl gripped America*, THE WASHINGTON POST (Dec. 12, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/dea-fentanyl-failure/>.

³⁹ See *July 2023 Monthly Update*, U.S. CUSTOMS AND BORDER PROTECTION (Aug. 18, 2023), available at <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2023-monthly-update>.

⁴⁰ Miroff, *supra* note 38.

⁴¹ *Id.*

⁴² *Id.*

⁴³ See *id.*

⁴⁴ See e.g., *New Non-Intrusive Inspection Systems to be Added to Bridge of the Americas Port of Entry*, U.S. CUSTOMS AND BORDER PROTECTION (Mar. 3, 2023), <https://www.cbp.gov/newsroom/local-media-release/new-non-intrusive-inspection-systems-be-added-bridge-americas-port>.

⁴⁵ See Miroff, *supra* note 38.

it had a ‘paradigm-shifting opportunity’ to ‘revolutionize’ the inspection process.”⁴⁶ Instead, DHS “‘continues to depend on CBP Officers to review thousands of images manually,’ . . . a shortsighted ‘failure to innovate’ that is ‘inexcusable and must be immediately addressed by current DHS leadership.’”⁴⁷ You must compel CBP to deploy the dollars Congress has appropriated for game-changing technologies at the border.

C. DHS must increase border patrols and resume construction of physical barriers.

DHS must increase border patrols along all parts of the southern border, not just ports of entry. Individuals carrying backpacks filled with drugs routinely penetrate remote areas far removed from ports of entry.⁴⁸ Current patrols are insufficient to stop them. A May 2023 audit found CBP agents overworked and overwhelmed by immigration surges.⁴⁹ Specifically, the audit determined:

Since 2019, shifts in U.S. immigration and border security policies, migrant surges, COVID-19, and the overall rising number of migrant encounters along the Southwest border have exacerbated staffing challenges. CBP’s and ICE’s current method of managing law enforcement staffing is unsustainable. . . . Despite greater workloads, staffing levels have remained the same, with CBP and ICE using details and overtime to temporarily address the rising number of encounters along the Southwest border. . . . Unless CBP and ICE assess and strategically change their current staffing management at the border, heavier workloads and low morale may lead to higher turnover and earlier retirements. This could worsen staffing challenges and degrade CBP and ICE’s capacity to perform their mission.

CBP agents cannot man all parts of the border at all times. This is why physical barriers remain critical to securing the southern border. Despite record levels of drug smuggling and illegal immigration, from day one the Biden Administration halted further construction of such barriers.⁵⁰ The Administration has even disassembled or sought to

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *See Rose, supra* note 36.

⁴⁹ *Intensifying Conditions at the Southwest Border are Negatively Impacting CBP and ICE Employees’ Health and Morale*, OIG 23-24, DHS OFFICE OF INSPECTOR GENERAL (May 3, 2023), available at <https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-24-May23.pdf>.

⁵⁰ *See Proclamation on the Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction* (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction>; *Department of Homeland Security Border Wall Plan Pursuant to Presidential*

remove barriers that Texas installed to reduce illegal crossings from Mexico.⁵¹ Every day that this Administration opposes physical barriers at the southern border is a day filled with further fentanyl smuggling and additional lives lost. DHS's recent policy reversal permitting 17 miles of wall construction in Starr County, Texas, while far too little to solve the problem, simply proves that you agree.⁵²

III. Conclusion

The stakes in stopping fentanyl could not be higher. Our faith in your leadership of DHS, and DHS's response to this attack on our communities, could hardly sink any lower. Get control of our borders. And stop allowing people and drugs to cross unlawfully. We look forward to your response.

Sincerely,



DANIEL CAMERON
Attorney General of Kentucky

Proclamation 10142, U.S. DEPARTMENT OF HOMELAND SECURITY (Jun. 9, 2021), available at https://www.dhs.gov/sites/default/files/publications/21_0611_dhs_security_border_wall_plan.pdf.

Recent developments do not change this reality in any meaningful way. On October 5, the Administration announced that it would grant a “waiver” to allow the construction of 17 miles of border wall in Starr County, Texas. See Nikolas Lanum, *Biden administration flips on ‘bigoted’ border wall after long history of attacks on Trump proposals*, FOX NEWS (Oct. 5, 2023), <https://www.foxnews.com/media/biden-administration-flips-bigoted-border-wall-history-attacks-trump-proposals>.

⁵¹ See Camillo Montoya-Galvez, *Judge orders Texas to remove floating border barriers, granting Biden administration request*, CBS NEWS (Sept. 6, 2023), <https://www.cbsnews.com/news/texas-border-barriers-buoys-removed-federal-judge-biden-administration/>; Andrea Vacchiano, *Texas Gov. Greg Abbott accuses Biden administration of cutting razor wire at border; ‘Opening the floodgates’*, NEW YORK POST (Sept. 21, 2023), <https://nypost.com/2023/09/21/texas-abbott-accuses-biden-administration-of-cutting-razor-wire-at-border/>.

⁵² See Andrew McCarthy, *Biden is Lying about the Border Wall*, NATIONAL REVIEW (Oct. 7, 2023), <https://www.nationalreview.com/2023/10/biden-is-lying-about-the-border-wall/> (noting that “[i]f Mayorkas really thinks there’s a better border-security strategy than building a wall, he’s not required to build a wall”).