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United States Senate
COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

December 21, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave. S.E.
Washington, D.C. 20528-0525

Dear Secretary Mayorkas:

We write today to express our concern that the U.S. Department of Homeland Security has not provided our Committee or the public with the FY 2020 Entry/Exit Overstay Report. This report includes information on the estimated number of individuals who have received a nonimmigrant visa but “remained in the United States beyond the authorized admission.”¹ For the past five years, DHS has published this report on a public website with the recognition that the estimated number of visa overstays is important to the public, to academics and researchers, and to lawmakers in Congress who are charged with oversight of DHS and our nation’s immigration system.

We have become aware that the FY 2020 Entry/Exit Overstay Report was transmitted to the House and Senate Committees on Appropriations and House and Senate Committees on the Judiciary on or about September 30, 2021. As you may be aware, the FY 2021 funding package mandated that this report be sent to our Committee, which has oversight over DHS and over the Entry/Exit system.² DHS also failed to meet a November 30 deadline to submit a Congressionally mandated report over its vetting of Afghan evacuees.³ These reports hold vital information for our oversight work of your Department and for the public as the American people seek to assess the impact of the Biden Administration’s immigration enforcement efforts. Your continued delay in providing these reports violates the law and raises significant questions about your commitment to uphold the laws Congress enacts.⁴

We are concerned that DHS did not publish the FY 2020 Entry/Exit Overstay Report on a public website out of concerns that this report would complicate the conversation around the “Plan C” amnesty proposals in the Democrats’ partisan reconciliation package. As you are aware, the U.S. House of Representatives

¹ *Fiscal Year 2020 Entry/Exit Overstay Report*, “Executive Summary.” U.S. Dept. of Homeland Sec. (Transmitted to H. and S. Comms. on the Judiciary and H. and S. Comms. on Appropriations).

² See Section 106, Consolidated Appropriations Act, 2021 (div. F of P.L. 116-260): “Section 107 of the Department of Homeland Security Appropriations Act, 2018 . . . related to visa overstay data and border security metrics, shall apply in fiscal year 2021 . . . the reference to “2017” shall be treated as referring to “2020”. See also Section 107, Dept. of Homeland Sec. Appropriations Act, 2018 (div. F of P.L. 115-141): “. . . the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives, the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Homeland Security of the House of Representatives, a report for fiscal year 2017 on visa overstay data by country . . .” (emphasis added.)

³ Sec. 2503, Extending Government Funding and Delivering Emergency Assistance Act (div. C, P.L. 117-43).

⁴ *Nom. of the Hon. Alejandro N. Mayorkas to be Sec’y, U.S. Dept. of Homeland Sec.*: Hearing before the S. Comm. on Homeland Sec. and Gov. Affairs. 117th Cong (January 19, 2021).

recently passed the President’s “Build Back Better” proposal on a party-line vote. This bill would offer parole to illegal immigrants who have continuously resided in the United States since January 1, 2011.⁵ This parole would put these illegal immigrants on the path to citizenship. The bill passed by the House and currently under consideration in the Senate would offer this parole benefit to illegal border crossers and to visa overstays – the same population included in the Department’s missing report.

Our staff obtained a copy of the missing FY 2020 Entry/Exit Overstay Report. The copy reviewed by our staff stated that the number of expected departures were 17.40 percent lower than anticipated, which led to an increase in the total number of overstays. The report further estimates that there were nearly 585,000 suspected in-country visa overstays in FY 2020 alone.⁶ The Congressional Budget Office estimates that over 6.5 million illegal immigrants would receive amnesty under the Build Back Better plan.⁷ The DHS estimates in the FY 2020 Entry/Exit Overstay Report may complicate existing estimates about the number of illegal immigrants who would receive parole under the Build Back Better plan, and we are concerned that the Department’s efforts to hide this number from the public are nothing more than a political cover for the Build Back Better plan’s radical, open border policies and provisions.

As some elected representatives in Congress consider whether to grant amnesty to millions of illegal immigrants, it is vital that our Committee and the public have information from DHS on how many visa overstays are in the country and could benefit from this proposed amnesty. To better understand why DHS did not release this report to the public, we ask the following questions:

1. Why did DHS not post the FY 2020 Entry/Exit Visa Overstay report on the public website where it has posted the five prior years’ reports?
2. Why did DHS not include the Senate Committee on Homeland Security and Governmental Affairs as a recipient on this report, even though Congress mandated that HSGAC receive this report?
3. Did DHS not share this report with the public out of concerns that it would impact the debate around the partisan amnesty provisions in President Biden’s reconciliation bill?

Thank you for your attention to this matter. We look forward to your response.

Sincerely,



James Lankford
United States Senator



Josh Hawley
United States Senator

⁵ Sec. 60001 of H.R. 5367, Build Back Better Act, Rules Comm. Print 117-18, available at: <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf>

⁶ *Supra* note 1.

⁷ *Estimated Budgetary Effects of Title VI, Committee on the Judiciary, H.R. 5376, the Build Back Better Act*, Cong. Budget Off. (Nov. 18, 2021), available at: <https://www.cbo.gov/publication/57625>.