

# United States Senate

WASHINGTON, DC 20510

## VIA ELECTRONIC TRANSMISSION

July 14, 2022

Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> Street SW  
Washington, D.C. 20536

Director Johnson,

We are writing to express our concern about the ongoing failure of President Biden's dangerous catch and release policies. Rather than detain illegal immigrants as the law requires, the Biden Administration appears intent on releasing as many illegal immigrants as possible into the country without any expectation that they will comply with our immigration laws.<sup>1</sup> This leaves our communities vulnerable to dangerous, criminal aliens who are more than happy to violate our immigration laws and commit heinous crimes. It is imperative that U.S. Immigration and Customs Enforcement (ICE) fully account for these failures and provide clear guidance on how the agency will enforce our laws and keep our communities safe.

Under the Alternatives to Detention (ATD) program, ICE releases apprehended illegal immigrants into the United States with some type of temporary monitoring in the hopes that they will show up for their immigration court hearing and then depart if they are ordered to do so. In a recent report, the Government Accountability Office (GAO) found that ATD is failing to keep track of illegal immigrants ICE is supposedly monitoring. By ICE's own calculations, 33 percent of the illegal immigrants unenrolled from ATD in FY2020 were unenrolled because they absconded and could not be found.<sup>2</sup> GAO calculates that, overall, 9 percent of all illegal immigrants enrolled in ATD in FY2020 ultimately could not be found.<sup>3</sup>

While these numbers sound bad enough, we are concerned that these calculations fail to truly capture the extent to which ATD is ineffective in ensuring that illegal immigrants actually show up for their immigration court hearings. The GAO report finds that **over 75% of all ATD participants were unenrolled before the conclusion of their immigration proceedings**. We find it troubling that so many illegal immigrants are unenrolled before the conclusion of their

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<sup>1</sup> 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), (b)(1)(B)(ii).

<sup>2</sup> Alternatives to Detention: ICE Needs to Better Assess Program Performance and Improve Contract Oversight, U.S. GOV'T ACCOUNTABILITY OFFICE (June 2022), <https://www.gao.gov/assets/gao-22-104529.pdf>.

<sup>3</sup> *Id.*

immigration court proceedings, despite the fact that the goal of the ATD program is to ensure that illegal immigrants complete their immigration proceedings.

It appears that ICE is enrolling illegal immigrants in ATD for only short periods of time in order to inflate the number of enrollees at any given time. We are concerned that this practice obscures the true nature of the absconder rate, and incorrectly implies greater compliance and participation by illegal immigrants in the ATD program than is in fact the case.

As an example, while most ATD enrollees are only enrolled for a short period of time, in a leaked 2019 ICE report on ATD, **ICE reported that it tracked a population of migrants from initial encounter at the border all the way through their final order of removal, and found that 90% of them absconded.**<sup>4</sup> In your May 13, 2021 written testimony, you stated that the ATD program has been used to help manage the flow of illegal immigrants crossing the southwest border. It is difficult for us to comprehend how a program with a 90 percent absconder rate is helping to manage the flow of over 100,000 illegal immigrants that DHS lets into the U.S. every month.

These rates of absconding pose a serious risk to communities across the country and raise serious questions about the Biden Administration's emphasis on ATD over actual detention. According to the GAO report, the number of illegal immigrants enrolled in ATD has more than doubled from approximately 111,000 in 2020 to 239,957 active participants as of May 2022.<sup>5</sup>

This is even more problematic due to the unprecedented surge of encounters at our southern border. Since President Biden took office, there have been approximately 3 million encounters with illegal immigrants along our southern border.<sup>6</sup> From January through May of 2021, there were over 700,000 encounters with illegal immigrants, compared to over 1 million during the same time frame in 2022.<sup>7</sup>

Instead of doing more to stop illegal immigration at our southern border, the Biden Administration has instead chosen to spread its failures to more cities. Recent reporting indicates

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<sup>4</sup> *Intensive Supervision Appearance Program (ISAP) First Semiannual Fiscal Year 2018-2020 Report to Congress*, available here: [https://www.scribd.com/document/571131207/ICE-report-on-ISAP#fullscreen&from\\_embed](https://www.scribd.com/document/571131207/ICE-report-on-ISAP#fullscreen&from_embed) (the ISAP program is synonymous with the ATD program, see: <https://crsreports.congress.gov/product/pdf/R/R45804>)

Note that the ISAP Report posted on the DHS website lacks most of the data reported in the ISAP report noted above. See *Intensive Supervision Appearance Program, fiscal years 2017, 2018, 2019, and 2020*, dated April 11, 2022, available here: <https://www.dhs.gov/sites/default/files/2022-06/ICE%20-%20Intensive%20Supervision%20Appearance%20Program%2C%20FYs%202017%20-%202020.pdf>

<sup>5</sup> *Alternatives to Detention: ICE Needs to Better Assess Program Performance and Improve Contract Oversight*, U.S. GOV'T ACCOUNTABILITY OFFICE (June 2022), <https://www.gao.gov/assets/gao-22-104529.pdf>.

<sup>6</sup> *Southwest Land Border Encounters*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited July 5, 2022).

<sup>7</sup> *Id.*

that the Department of Homeland Security is considering plans to transport illegal immigrants from the border to cities further and further within the interior.<sup>8</sup>

To help Congress better understand the extent of this problem and the faults with extensive use of ATD, we ask that you respond to the following questions no later than August 11, 2022:

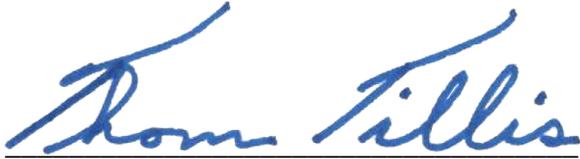
1. Please provide the most up to date number for those actively enrolled in ATD.
2. If the point of ATD is to ensure that migrants appear for their final decision and then depart if they are issued a final order of removal (as described in the GAO report and in the testimony of Tae D. Johnson, as discussed above), then why does ICE unenroll so many migrants prior to the final action on their case?
3. According to the June 2022 GAO report cited above, during the study period, 54,035 ATD participants were unenrolled because they absconded. Does ICE know where those migrants are today?
4. What was the absconder rate for FY2021? Please provide the rate based on the total number of those enrolled, the rate based on the total unenrolled population, and the rate based on all those who were at one time enrolled in ATD but ultimately did not show up for their immigration court hearing.
5. What actions is ICE taking to apprehend and remove those who have absconded from the ATD program?
6. In light of these disturbing statistics, will ICE take action to limit the use of ATD? Please provide a copy of ICE's analysis on the effectiveness of the ATD program and how ICE has justified continued funding.
7. What actions does ICE currently take to screen illegal immigrants in ATD to identify criminal aliens and others who pose a risk to our communities?
8. Due to the increased number of illegal immigrants in ATD, and the ongoing surge of illegal immigrants at our southern border, what actions will ICE take to improve its screening to ensure that criminal aliens are not being released into our communities?
9. Does ICE have sufficient bed space to detain all illegal immigrants during the pendency of their immigration court proceedings? If not, what additional bed space and resources will be necessary to properly enforce our immigration laws?
10. So far in fiscal year 2022 (October 1, 2021 – June 30, 2022) approximately 1.7 million migrants have been encountered at the Southwest border trying to enter illegally, and while about half of them returned to Mexico under Title 42, the other half were let into the United States. Out of the approximately 850,000 who were let in, how many were detained, how many were put in the ATD program, and how many were released without being enrolled in the ATD program?
11. Please provide a copy of the ATD/ISAP report cited in footnote 4.

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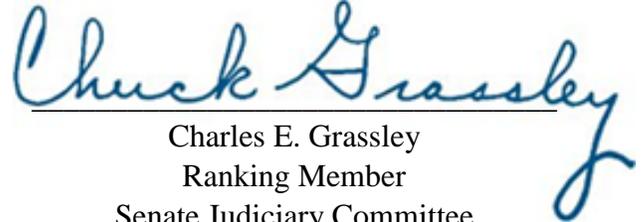
<sup>8</sup> Julia Ainsley, *Amid border surge, Biden admin plans to send migrants to cities deeper inside U.S., starting with L.A., say internal documents*, NBC NEWS (June 8, 2022, 2:30 PM), <https://www.nbcnews.com/politics/immigration/border-surge-biden-admin-plans-send-migrants-cities-deeper-us-starting-rcna32530>.

The Biden Administration agenda not only encourages more illegal immigration to our southern border, but also fails to enforce our laws once illegal immigrants arrive. Your prompt response to our questions will ensure our ability to consider best steps to secure our southern border and enforce the law.

Sincerely,



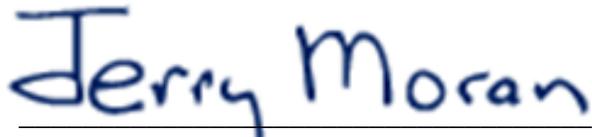
Thom Tillis  
United States Senator



Charles E. Grassley  
Ranking Member  
Senate Judiciary Committee



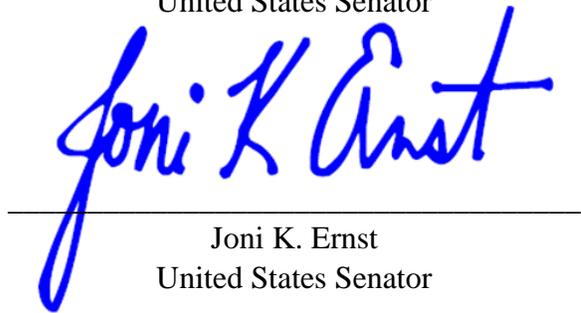
Kevin Cramer  
United States Senator



Jerry Moran  
United States Senator



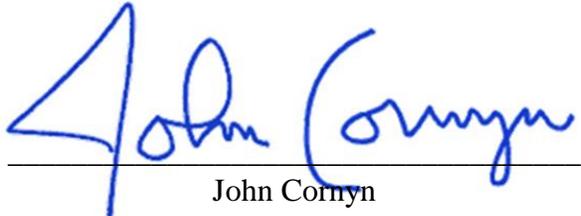
John Boozman  
United States Senator



Joni K. Ernst  
United States Senator



Mike Braun  
United States Senator



John Cornyn  
United States Senator



Tom Cotton  
United States Senator