

Congress of the United States

Washington, DC 20515

September 23, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
Washington, D.C.

The Honorable Kamala D. Harris
Vice President of the United States
The White House
Washington, D.C.

President Biden and Vice President Harris:

As a result of your open-borders policies, overseen by Vice President Harris, who was tasked with “stemming the migration” at our border with Mexico, more than 500,000 unaccompanied alien children (UACs) have crossed the southwest border without a parent or guardian to provide care since you took office, a massive increase when compared to previous administrations.¹ These UACs often experience horrible sexual, physical, and emotional abuse on the journey and are victims of cartel trafficking and exploitation, a business that surged an estimated 2,500 percent from the Trump Administration to the middle of your term in 2022.² Sadly, the suffering these children endure does not end at the border. Your Administration also fails them when they arrive in the United States by rushing them out of the custody of your Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) into the hands of unvetted sponsors who often continue to exploit and abuse them.³

Even as the trafficking business and the number of children entering the U.S. surged, HHS ORR cut back significantly on background checks and vetting procedures to speed up the process, despite knowing children were being trafficked through HHS ORR’s UAC program.⁴ Your Administration likewise continued Vice President Harris’s longtime priority of cutting back on information sharing between HHS ORR and law enforcement related to unaccompanied children and sponsors. When the

¹ Lauren Egan, et al., *Biden Tasks Harris with ‘stemming the migration’ on southern border*, NBC NEWS (March 24, 2021), <https://www.nbcnews.com/politics/white-house/biden-taps-harris-lead-coordination-efforts-southern-border-n1261952>; U.S. Customs and Border Protection, *Nationwide Encounters* (filtered for Southwest Land Border, UC / Single Minors, FY2021 to FY 2024 (YTD), U.S. DEP’T OF HOMELAND SEC. (last accessed on July 17, 2024, and data current as of July 5, 2024), <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

² See Vanessa Buschschlüter, *Surge of children crossing dangerous Darién Gap jungle*, BBC NEWS (May 16, 2024), <https://www.bbc.com/news/articles/cz5d5jz30v4o>; Miriam Jordan, *Smuggling Migrants at the Border Now a Billion-Dollar Business*, N. Y. TIMES (July 25, 2022) (noting cartel revenues from migrant smuggling have soared to an estimated \$13 billion as of 2022 from \$500 million in 2018), <https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html>.

³ See Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N. Y. TIMES (February 28, 2023) (noting, “[HHS] staff members said in interviews that Mr. Becerra continued to push for faster results, often asking why they could not discharge children with machine-like efficiency,” and quoting him as saying, “‘If Henry Ford had seen this in his plants, he would have never become famous and rich. This is not the way you do an assembly line.’”).

⁴ See, e.g., U.S. Sen. Comm. on Homeland Sec. and Governmental Affairs, Minority Staff Report, *Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse* (Dec. 2022) at ii (referencing HHS Field Guidances 10 and 11, which included waiving background checks on household members and alternate adult care givers, including “waiving public records and sex offender registry checks”), [https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/Federal%20Care%20of%20Unaccompanied%20Alien%20Children%20Report%20\(FINAL\).pdf](https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/Federal%20Care%20of%20Unaccompanied%20Alien%20Children%20Report%20(FINAL).pdf) [hereinafter HSGAC Minority Staff Report]; see also, e.g., Abbie VanSickle, *Overwhelmed federal officials released immigrant teens to traffickers in 2014*, WASH. POST (Jan. 26, 2016), https://www.washingtonpost.com/national/failures-in-handling-unaccompanied-migrant-minors-have-led-to-trafficking/2016/01/26/c47de164-c138-11e5-9443-7074c3645405_story.html.

Trump Administration implemented a Memorandum of Agreement (MOA) to provide for robust information sharing between the Department of Homeland Security (DHS) and HHS ORR, then-Senator Harris called this attempt to protect children and communities “outrageous.”⁵ She also introduced legislation in response to the Trump MOA that slashed funding for Immigration and Customs Enforcement by \$220 million.⁶ Her bill was so extreme it failed to allow HHS information to be used by DHS for immigration enforcement even for potential sponsors and household members with convictions or pending charges of child abuse, sexual assault, child pornography, or any other crime.⁷ Even House Democrats considered Harris’s approach too radical and added these exceptions to counteract the extreme nature of her legislative proposal. Their approach, unlike Harris’s, allowed HHS information to be used to deport child predators and those convicted of serious felonies.⁸ Given her stated policy priorities, it is no wonder your Administration later revoked the Trump Administration’s MOA, seriously hampering the work of law enforcement,⁹ and promulgated a final rule enshrining the bar on sharing such information with law enforcement officials.¹⁰

Your Administration further stripped Customs and Border Protection officials of their ability to conduct familial DNA testing, as was implemented by the Trump Administration to verify adults’ claims that they are related to children they bring across the border.¹¹ This made the smuggling and trafficking of these kids that much easier. Early into your term, your Administration also canceled protections the Trump Administration proposed to provide post-release services for all children placed with sponsors, including in-person visits and extended follow-up after placement.¹² These protections would have helped ensure children were safe. Instead, the actions of your Administration have been disastrous and now, HHS ORR is actively attempting to cover up the results of its egregious decisions. We call upon you to put an end to that cover-up.

When Senator Grassley and Senator Cassidy, ranking members of the Senate Budget Committee and Senate Committee on Health, Education, Labor, and Pensions, asked HHS ORR contractors and grantees whether they took necessary steps to protect children, HHS obstructed those inquiries, directing the entities not to respond.¹³ This included Southwest Key, which Senator Grassley asked, among other things, about its vetting of staff before they have access to minors.¹⁴ The Department of Justice has since sued Southwest Key for turning a blind eye to nearly a decade of child rape and sexual abuse by its

⁵ Tal Kopan, *ICE arrested undocumented adults who sought to take in immigrant children*, SAN FRANCISCO CHRONICLE (Dec. 10, 2018), <https://www.sfchronicle.com/politics/article/ICE-arrested-undocumented-adults-who-sought-to-13455142.php>.

⁶ Families, Not Facilities Act, S. 3624, 115th Cong. § 5.

⁷ *Id.* at §§ 3(a), 3(b)(2), and 4 (allowing DHS to use HHS information to investigate or report trafficking, abuse, or neglect, but not to apprehend, detain, or remove from the U.S. an unaccompanied child, proposed or current custodian, proposed or current sponsor, or their household members, regardless of criminal history).

⁸ Consolidated Appropriations Act, 2019, H.J. Res. 31, 116th Cong. § 224(a)-(b).

⁹ Press Release, *HHS and DHS Joint Statement on Termination of 2018 Agreement*, U.S. DEP’T OF HOMELAND SEC. (March 12, 2021), <https://www.dhs.gov/news/2021/03/12/hhs-and-dhs-joint-statement-termination-2018-agreement>.

¹⁰ 45 C.F.R. § 410.1201(b) (2024).

¹¹ See Dep’t of Homeland Sec., Off. of Inspector General, *CBP Officials Implemented Rapid DNA Testing to Verify Claimed Parent-Child Relationships* (Feb. 8, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-02/OIG-22-27-Feb22.pdf>; cf. The National Desk, *Expert says ending DNA testing at the border will result in ‘more suffering and exploitation’*, ABC NEWS ST. LOUIS (June 14, 2023), <https://abcstlouis.com/news/nation-world/expert-says-ending-dna-testing-at-the-border-will-result-in-more-suffering-and-exploitation-fake-family-units-child-trafficking-customs-and-border-protection-mexico-us-biden-administration>.

¹² *Proposed Information Collection Activity; Sponsor Review Procedures for Unaccompanied Alien Children*, 86 Fed. Reg. 308 (Jan. 5, 2021); see also HSGAC Minority Staff Report, *supra* note 4, at 30-31.

¹³ Press Release, *Grassley Goes Head-To-Head With HHS Secretary On Immigration And Rural Health Care*, Off. of Senator Charles E. Grassley (Mar. 14, 2024) (additional emails indicating HHS continued to advise its contractors and grantees not to respond even after Secretary Becerra’s pledges to the contrary are on file with Senate staff), <https://www.grassley.senate.gov/news/news-releases/grassley-goes-head-to-head-with-hhs-secretary-on-immigration-and-rural-health-care>.

¹⁴ Letter from Senator Charles E. Grassley, Ranking Member, Senate Comm. on the Budget, to Dr. Anselmo Villarreal, President & CEO of Southwest Key Programs (Feb. 21, 2024).

staff.¹⁵ During this same time, HHS ORR provided Southwest Key with more than \$3 billion to house UACs.¹⁶ These contractors and grantees receive large sums of taxpayer dollars, a lucrative business that has boomed during your Administration.¹⁷ Yet HHS ORR told them not to answer Congress when it asked whether basic protections were afforded to these kids. This is completely unacceptable.

At the same time, since early 2023, the House Judiciary Committee has sought information on the total number of UACs HHS ORR has lost contact with after placement during your Administration.¹⁸ According to the *New York Times*, as of February 2023, ORR had been unable to contact at least 85,000 UACs after placement with sponsors,¹⁹ or roughly 34 percent of total UACs released up to that point in your term.²⁰ Applying the 34 percent figure to the most up-to-date number of 432,938 UACs the Administration has released to sponsors,²¹ we estimate ORR has been unable to contact nearly 150,000 UACs through Safety and Well-being calls after their release.²² When confronted by the House Judiciary Committee with an estimate based on the *Times*'s findings,²³ ORR did not dispute it.²⁴ Although the House Judiciary Committee twice subpoenaed HHS for internal agency data relating to the total number of UACs with whom it has lost contact after placement, HHS has refused to provide the subpoenaed data.²⁵

Unfortunately, the cover-up does not end there. Recently, DHS informed Senator Grassley's office that HHS ORR has not sufficiently complied with two out of every three subpoenas and other information requests that resulted from his referral of possible child trafficking rings across the U.S. to DHS in January.²⁶ By not supplying the information law enforcement requested, ORR denied Homeland Security Investigations (HSI) agents critical information, including the last known addresses of children and sponsors and the identity of other household members.²⁷ In part because of HHS ORR's lack of cooperation, DHS has so far only been able to locate less than four percent of sponsors identified as investigative targets, and a similarly small number of UACs.²⁸

At a recent Senate roundtable forum, "The Exploitation Crisis: How the U.S. Government is Failing to Protect Migrant Children from Trafficking and Abuse," senators and members of the public

¹⁵ U.S. District Court for the Western District of Texas, Complaint, *United States v. Southwest Key Programs, Inc.*, Case No. 1:24-CV-00798 (filed July 17, 2024), https://www.justice.gov/d9/2024-07/complaint_-_united_states_v_southwest_key_0.pdf.

¹⁶ *Id.* at paragraph 17.

¹⁷ Madeleine Rowley, *Nonprofits Are Making Billions off the Border Crisis*, THE FREE PRESS (May 12, 2024), <https://www.thefp.com/p/nonprofits-make-billions-off-migrant-children>.

¹⁸ See Transcribed Interview of Robin Dunn Marcos, Director, Off. of Refugee Resettlement, U.S. Dep't of Health and Human Servs. (June 8, 2023) (on file with H. Judic. Comm.).

¹⁹ Dreier, *supra* note 3.

²⁰ Glenn Kessler, *Trump's claim that Biden lost 88,000 children, with many now 'dead'*, WASH. POST (June 10, 2024), <https://www.washingtonpost.com/politics/2024/06/10/trumps-claim-that-biden-lost-88000-children-with-many-now-dead/>.

²¹ *Latest UC Data, Total Monthly Discharges to Individual Sponsors Only*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (last accessed Mar. 22, 2024); Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (last accessed Sept. 11, 2024).

²² *Id.* Kessler, *supra* note 20. The H. Judic. Comm. estimates HHS has lost contact with at least 147,198 UACs, 34 percent of the 432,938 UACs HHS has placed with sponsors during the Biden-Harris Administration.

²³ Kessler, *supra* note 20.

²⁴ See, e.g., Call from Comm. staff, H. Comm. on the Judic., to Off. of the Ass. Sec'y for Leg. staff, U.S. Dep't of Health and Human Servs. (July 12, 2024) (on file with Comm.).

²⁵ Letter from Jim Jordan, Chair, H. Comm. on the Judic., to Xavier Becerra, Sec'y, U.S. Dep't of Health and Human Servs. (Jan. 23, 2024); Letter from Jim Jordan, Chair, H. Comm. on the Judic., to Xavier Becerra, Sec'y, U.S. Dep't of Health and Human Servs. (Sept. 4, 2024).

²⁶ Notes of U.S. Dep't of Homeland Sec. staff briefing (July 16, 2024) (on file with Off. of Sen. Charles Grassley).

²⁷ *Id.*

²⁸ *Id.*

heard from a panel with direct knowledge of this crisis.²⁹ What the witnesses told the oversight panel was shocking. For example, HHS retaliated against one of the witnesses, Ms. Tara Lee Rodas, after she blew the whistle and tried to stop the placement of young children with a household in Ohio connected to the violent MS-13 gang.³⁰ In addition, witnesses described how HHS and its contractors prioritized UAC placement speed over UAC safety by failing to verify the legitimacy of identity documents, failing to obtain criminal history from the countries of origin of UACs and sponsors, and failing to conduct legally required home studies for UACs who had endured sexual or other abuse.³¹ Other whistleblowers continue to come forward with similar information. Congress has the right to obtain information necessary to conduct oversight of these widespread failures to protect the lives of children without HHS standing in the way.

HHS's failure to ensure UACs are in appropriate placements and to adequately vet sponsors is harmful not only to the UACs, but also to American citizens. As the Attorney General under the Trump Administration recognized, the UAC program has for years suffered from exploitation by criminals, including "gang members who come to this country as wolves in sheep[']s clothing" and "use th[e UAC] program as a means by which to recruit new members."³² As the House Judiciary Committee's oversight has shown, under Secretary Becerra's leadership, HHS has ignored the potential criminality and gang affiliation of UACs.

Indeed, as revealed in the House Judiciary Committee's May 2023 interim report, in May 2022, HHS ORR released to a sponsor a UAC with a previous arrest record for "illicit association with MS-13."³³ That UAC, released by your Administration, went on to brutally assault and murder 20-year-old American citizen Kayla Hamilton.³⁴ Incredibly, HHS noted on several occasions to the House Judiciary Committee its focus on protecting the privacy of Kayla's murderer.³⁵ Although local police quickly identified Walter Javier Martinez as the primary suspect in the murder and expressed their concern about the threat he posed to society, according to new investigative reporting, Martinez was placed in a Maryland foster home with other children and enrolled in high school.³⁶ Later, while in custody for murdering Kayla, the alien authored a letter in which he "admitted to committing [four] murders, [two] rapes, and additional other crimes."³⁷ Martinez has since been sentenced to more than 70 years in prison.³⁸

Despite having released to a sponsor a UAC with gang tattoos and a history of "illicit

²⁹ Press Release, *The Exploitation Crisis: How the US Gov't Fails to Protect Migrant Children from Trafficking & Abuse*, Off. of Sen. Charles E. Grassley (July 10, 2024), <https://www.grassley.senate.gov/news/video/watch/the-exploitation-crisis-how-the-us-govt-fails-to-protect-migrant-children-from-trafficking-and-abuse-2024-07-10> [hereinafter *The Exploitation Crisis Roundtable*].

³⁰ Press Release, *RECORDS: HHS Sent Unaccompanied Minors To Sponsors With MS-13 Ties, Potential Trafficking Rings*, Off. of Sen. Charles E. Grassley (July 11, 2024), <https://www.grassley.senate.gov/news/news-releases/records-hhs-sent-unaccompanied-minors-to-sponsors-with-ms-13-ties-potential-trafficking-rings>.

³¹ *The Exploitation Crisis Roundtable*, *supra* note 29.

³² *Attorney General Sessions Gives Remarks to Federal Law Enforcement in Boston About Transnational Criminal Organizations*, U.S. DEP'T OF JUSTICE (Sept. 21, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-gives-remarks-federal-law-enforcement-boston-about>.

³³ See H. Comm. on the Judiciary, Interim Staff Rep., *The Murder of Kayla Hamilton: A Case for Immigr. Enf't, and Border Sec.* (May 23, 2023).

³⁴ *Id.*

³⁵ E-mail from Off. of Ass. Sec'y for Leg. staff, U.S. Dep't of Health and Human Servs. to Comm. staff, H. Comm. on the Judic. (May 22, 2023) (on file with Comm.); E-mail from Off. of Ass. Sec'y for Leg. staff, U.S. Dep't of Health and Human Servs. to Comm. staff, H. Comm. on the Judiciary (May 24, 2023) (on file with Comm.).

³⁶ Chris Papst, *MS-13 gang member attends Maryland High School as murder suspect, school not told*, FOX 45 BALTIMORE (Sept. 9, 2024), <https://www.foxbaltimore.com/news/project-baltimore/ms-13-gang-member-attends-maryland-high-school-as-murder-suspect-school-not-told>.

³⁷ Press Release, Off. of the State's Att'y, Harford County, Maryland (Aug. 21, 2024), https://www.harfordcountystatesattorney.org/illegal-immigrant-ms-13-gang-member-pleads-guilty-in-brutal-2022-murder/?fbclid=IwY2xjawEzd-NleHRuA2FibQIxMQABHaAfjtcHc4YCUfwaoHPE90LeFeGazUN0C0UDUNfeQX9Y6UhBbTOL0WrWqg_aem_zd2qdQ41se4z14WoUKhjCg.

³⁸ *Id.*

association” with MS-13, HHS told the House Judiciary Committee that it does not have a policy to refer known or suspected gang members to the Justice Department for investigation or, where appropriate, prosecution.³⁹ At the same time, ORR Director Robin Dunn Marcos, the HHS official in charge of the UAC program, admitted that, while HHS sometimes contacts the consulate or embassy of a UAC’s country of origin or last habitual residence to verify some documents or claimed familial relationships, HHS does not even request UACs’ criminal records.⁴⁰ Troublingly, HHS has also admitted that it does not currently have any secure facilities “in-network”—that is, facilities designed for the secure placement of UACs who pose a danger to themselves or others or who have been determined to have a criminal record.⁴¹

An August 2024 House Judiciary Committee report highlighted yet another case of UAC criminality, detailing how Juan Carlos Garcia Rodriguez, a UAC from Guatemala released by your Administration, horrifically assaulted and murdered 11-year-old Maria Gonzalez.⁴² Maria’s father found “his daughter’s body wrapped in a trash bag and stuffed in a laundry basket that was put beneath her bed.”⁴³ Garcia Rodriguez was encountered by Border Patrol after entering the U.S. illegally in El Paso in January 2023, smuggled to the U.S. border by a “guide” paid for by his parents.⁴⁴ Despite being overheard commenting about his desire to run away while in HHS custody, HHS placed Garcia Rodriguez with an unrelated adult sponsor who had twice previously sponsored unrelated UACs.⁴⁵ Unsurprisingly, shortly after the Biden-Harris Administration’s release of Garcia Rodriguez, he became one of the estimated 150,000 UACs with whom HHS has lost contact.⁴⁶ Just months after HHS lost contact with Garcia Rodriguez, he ran away from his sponsor.⁴⁷ Not long after his 18th birthday, and mere months after his release from HHS custody, Garcia Rodriguez, brutally assaulted and murdered Maria.⁴⁸

This is not a partisan issue. It can and should bring us together, as we try to protect Americans and UACs placed in HHS ORR custody alike. Your Administration must make changes to its policies and procedures for UACs to end this public safety crisis. It must also take urgent steps to provide information to law enforcement and Congress, to reveal the crisis’s full scope. We request that you immediately instruct HHS Secretary Becerra to take urgent steps to this end: HHS must provide access to the UAC Portal, HHS’s system of record for UACs, to federal law enforcement, HHS’s Inspector General, and Congress, allowing them to quickly conduct investigations and oversee the UAC placement program, and to analyze data regarding suspicious UAC placements; it must fully cooperate with DHS’s HSI and other federal, state, local, and tribal law enforcement agencies seeking to locate children and investigate trafficking, smuggling, and other forms of child exploitation; and it must thoroughly respond to congressional oversight requests and instruct HHS’s contractors and grantees to do the same.

³⁹ H. Comm. on the Judiciary, Interim Staff Rep., *New Information and Testimony From Biden Administration Officials Reveal Disregard for Potential Gang Affiliation of UACs* at 14 (June 17, 2024).

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 3.

⁴² See H. Comm. on the Judiciary, Interim Staff Rep., *The Consequences of the Biden-Harris Administration’s Open-Borders Policies: The Case of the Illegal Alien Who Brutally Assaulted and Murdered Maria Gonzalez* (Aug. 12, 2024).

⁴³ *Id.* at 7, 12 (internal quotation marks omitted).

⁴⁴ *Id.* at 5, 7.

⁴⁵ *Id.* at 8, 9.

⁴⁶ See *id.* at 11; See *supra* note 22.

⁴⁷ See generally *id.* at 11.

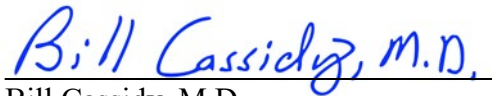
⁴⁸ *Id.* at 7, 11.

HHS must stop its cover-up and cooperate with law enforcement and Congress to end this crisis and protect unaccompanied children and the American people. Thank you for your prompt attention to this matter.

Sincerely,



Charles E. Grassley
Ranking Member
Senate Committee on the Budget



Bill Cassidy, M.D.
Ranking Member
Senate Committee on
Health, Education, Labor, and Pensions



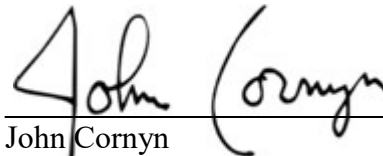
Ron Johnson
Ranking Member
Senate Committee on
Homeland Security and Governmental Affairs
Permanent Subcommittee on Investigations



Jim Jordan
Chairman
House Committee on the Judiciary



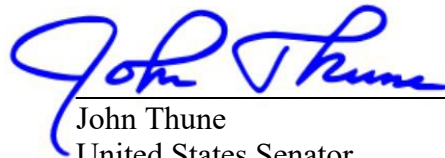
Mike Crapo
United States Senator



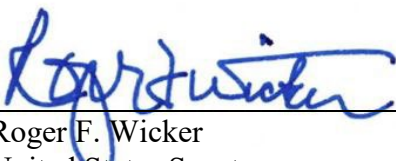
John Cornyn
United States Senator



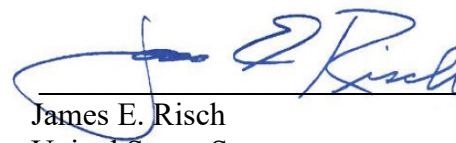
Lindsey O. Graham
Ranking Member
Senate Committee on the Judiciary



John Thune
United States Senator



Roger F. Wicker
United States Senator



James E. Risch
United States Senator



John Hoeven
United States Senator



Mike Lee
United States Senator



Tim Scott
United States Senator



Ted Cruz
United States Senator



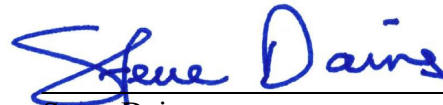
Deb Fischer
United States Senator



Shelley Moore Capito
United States Senator



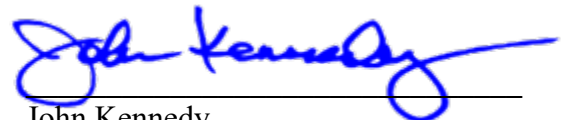
James Lankford
United States Senator



Steve Daines
United States Senator



Dan Sullivan
United States Senator



John Kennedy
United States Senator



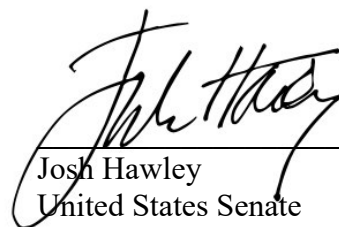
Marsha Blackburn
United States Senator



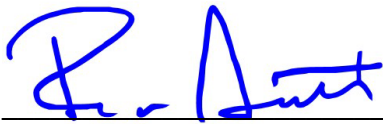
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United States Senator



Mike Braun
United States Senator



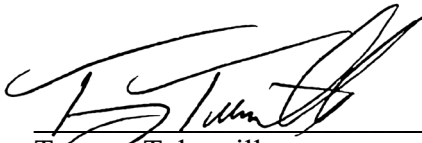
Josh Hawley
United States Senate



Rick Scott
United States Senator



Roger Marshall, M.D.
United States Senator



Tommy Tuberville
United States Senator



Markwayne Mullin
United States Senator



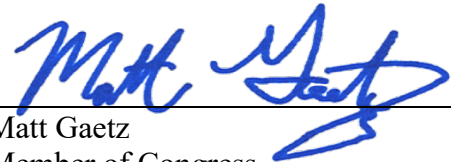
Katie Boyd Britt
United States Senate



Pete Ricketts
United States Senator



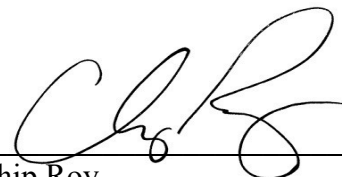
Tom McClintock
Chairman
House Committee on the Judiciary
Subcommittee on Immigration
Integrity, Security, and Enforcement



Matt Gaetz
Member of Congress



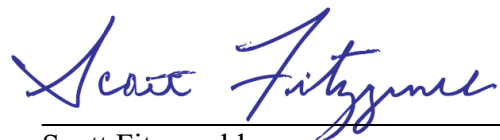
Andy Biggs
Member of Congress



Chip Roy
Member of Congress



Dan Bishop
Member of Congress



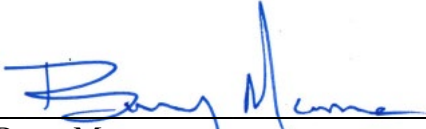
Scott Fitzgerald
Member of Congress



Cliff Bentz
Member of Congress



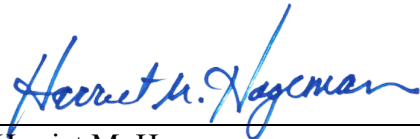
Ben Cline
Member of Congress



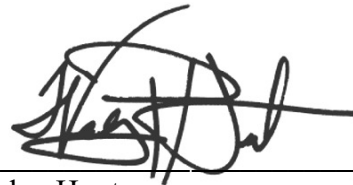
Barry Moore
Member of Congress



Russell Fry
Member of Congress



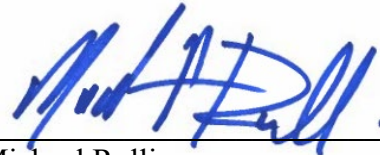
Harriet M. Hageman
Member of Congress



Wesley Hunt
Member of Congress



Laurel Lee
Member of Congress



Michael Rulli
Member of Congress

Cc: The Honorable Xavier Becerra
Secretary
Department of Health and Human Services