

United States Senate

WASHINGTON, DC 20510

December 1, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
300 7th Street SW
Washington, D.C. 20024

Dear Secretary Mayorkas,

According to recently obtained data, tens of thousands of immigration court cases concerning the removal of illegal aliens were dismissed during Fiscal Year 2022 (FY 2022) because of failures by Department of Homeland Security (DHS) officials to properly file “Notice to Appear” (NTA) documents ahead of the scheduled court hearings.

As you are likely aware, the initiation of removal proceedings against an illegal alien generally involves two steps. First, DHS serves the alien with an NTA alleging the alien’s removability from the United States and scheduling a court date and location for the alien to appear for an immigration hearing. Second, DHS files that NTA with the immigration court that will hold the hearing. Importantly, even if a hearing is scheduled, jurisdiction with the court does not vest until the NTA is filed with the court—meaning that if an NTA is not filed, the immigration court is forced to dismiss the case against the alien, as a result of which the alien remains in the United States illegally with no immigration proceeding pending.

Little information has been provided regarding why this mistake is occurring and how DHS will remedy it. Recent reports, including one by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University titled, “Over 63,000 DHS Cases Thrown Out of Immigration Court This Year Because No NTA Was Filed,” underscore the need for greater transparency and congressional oversight. Therefore, we write to request additional information regarding your department’s practices concerning NTAs.

In 2019, following the Supreme Court’s decision in *Pereira v. Sessions*, all three DHS components authorized to issue and file NTAs began utilizing the Executive Office of Immigration Review’s (EOIR) Interactive Scheduling System (ISS) to schedule an alien’s immigration court hearing at the same time the NTA is issued, for cases where the alien at issue is not detained.

Prior to this change in 2019, occurrences of DHS failing to file NTAs were rare. In FY 2018, for example, only 0.3 percent of cases were dismissed because no NTA was filed. And even after this change, such dismissals remained rare: In FY 2019 and 2020, the number of cases dismissed for failure to file an NTA climbed slightly to 1.7 percent and 2.4 percent, respectively (less than 6,000 cases per fiscal year).

Several months after you took office, however—and roughly two years after DHS employees began using ISS for scheduling—the number and percentage of cases dismissed because an NTA

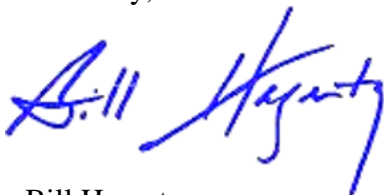
was not filed skyrocketed. The percentage of cases dismissed for failure to file an NTA in FY 2021 was more than 10 percent, and the most recent data for FY 2022 indicates that more than 16 percent of all cases—63,586 cases, to be precise—were dismissed as a direct result of DHS’s failure to file an NTA.

This raises the question: What caused this substantial spike in incidences of DHS officials not filing an NTA after you took office and, consequently, tens of thousands of immigration cases against illegal aliens being dismissed because of DHS’s failure to file paperwork? We urge you to immediately review DHS policies and practices relating to the issuance and filing of NTAs and provide answers to the questions below.

1. Please explain which DHS component or type of employee is responsible for filing NTAs.
2. Have there been any directives or memoranda to DHS employees regarding NTAs during the course of the Biden Administration? If so, please provide a copy of any such directives or memoranda.
3. Have there been any organizational changes within DHS that impact the filing of NTAs with immigration courts? If so, please describe any such change and why it was made.
4. Please explain why 16 percent of all FY 2022 immigration cases (totaling 63,586 cases) were dismissed for DHS’s failure to file an NTA and the status of those illegal aliens.
5. What is DHS doing to prevent additional immigration cases from being dismissed for failure to file an NTA?
6. Has DHS sought to reschedule the 63,586 cases that have been dismissed during FY2022 for failure to file an NTA?
7. Can DHS account for the whereabouts of illegal aliens whose cases were dismissed for DHS’s failure to file an NTA?
8. What is the estimated cost to taxpayers of wasted immigration court time, rescheduling 63,586 cases that have been dismissed during FY 2022, and other expenses associated with those individuals whose cases were dismissed for DHS’s failure to file an NTA?
9. Please provide the number of NTAs not filed, by month, dating back to January 2021, and broken down by DHS component and specific unit.

We appreciate your attention to this matter and request a written response by December 23, 2022.

Sincerely,



Bill Hagerty
United States Senator



Marsha Blackburn
United States Senator

Bill Cassidy, M.D.

Bill Cassidy
United States Senator

Ted Cruz

Ted Cruz
United States Senator

M. Michael Rounds

M. Michael Rounds
United States Senator

Cindy Hyde-Smith

Cindy Hyde-Smith
United States Senator

Ron Johnson

Ron Johnson
United States Senator