

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

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STATE OF TEXAS, )  
STATE OF MISSOURI, )  
  
*Plaintiffs,* )  
  
v. )  
  
JOSEPH R. BIDEN, JR., )  
in his official capacity as )  
President of the United States, *et al.*, )  
  
*Defendants.* )

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Civil Action No. 2:21-cv-00067-Z

**DEFENDANTS' MONTHLY REPORT FOR DECEMBER 2021**

On August 13, 2021, the Court entered an injunction requiring Defendants to, *inter alia*, “enforce and implement [the Migrant Protection Protocols (MPP)] *in good faith*.” ECF No. 94 at 52; *see State v. Biden*, No. 21-10806, 2021 WL 3674780 at \*13 (5th Cir. Aug. 19, 2021). “To ensure compliance with this order,” the Court provided, “starting September 15th, 2021, the Government must file with the Court on the 15th of each month, a report stating

(1) the total monthly number of encounters at the southwest border; (2) the total monthly number of aliens expelled under Title 42, Section 1225, or under any other statute; (3) Defendants’ total detention capacity as well as current usage rate; (4) the total monthly number of “applicants for admission” under Section 1225; (5) the total monthly number of “applicants for admission” under Section 1225 paroled into the United States; and (6) the total monthly number of “applicants for admission” under Section 1225 released into the United States, paroled or otherwise.

ECF No. 94 at 52-53. Further, on November 18, 2021, the Court granted in part and denied in part Plaintiffs’ Motion to Enforce Permanent Injunction and for Expedited Discovery. ECF No. 116.

As part of the relief, the Court added the following requirements to Defendants’ monthly reporting:

- Defendants’ reports filed with the Court in compliance with the injunction, including the report required by subsection (b), must include - as a part of categories (5) and (6) - the number of applicants paroled or released into the United States based on DHS’s lack of detention capacity; and
- Defendants’ reports filed with the Court in compliance with the injunction, including the report required by subsection (b), must show data on Haitian migrants in all categories.

ECF No. 116 at 9.

Defendants submit the following Report in compliance with these requirements.

**1. Total Monthly Number of Encounters at the Southwest Border**

For the month of December 2021, DHS reported 178,840 total encounters at the Southwest Border (SWB). Ex. A at 1 (CBP Report). This figure combines statistics reported by the U.S. Customs and Border Protection’s Office of Field Operations (OFO), which deals with noncitizens

seeking to enter at land ports of entry (POE), with statistics from the U.S. Border Patrol (USBP), which apprehends noncitizens seeking to enter between POEs. This figure reflects the sum of all Title 8 Apprehensions between the ports of entry along the SWB and Title 8 Inadmissibles at land ports of entry along the SWB, 100,251, and all Title 42 Expulsions at and between the ports of entry along the SWB, 78,589, reported by OFO and USBP . Ex. A at 1.

DHS also reported, for the month of December 2021, 7,075 total encounters with Haitian nationals. Ex. A at 1. This figure similarly reflects the sum of all Haitian Title 8 Apprehensions between the ports of entry along the SWB and Title 8 Inadmissibles at land ports of entry along the SWB, 5,176, and all Title 42 Expulsions at and between the ports of entry along the SWB, 1,899, reported by OFO and USBP. Ex. A at 1.

**2. Total Monthly Number of Aliens Expelled Under Title 42, Section 1225, or Under Any Other Statute**

For the month of December 2021, DHS reported 86,342 total noncitizens expelled under Title 42 and removed or returned under Title 8 authorities (including 8 U.S.C. § 1225). This figure includes 78,589 Title 42 expulsions and 6,881 Title 8 removals and returns reported by CBP, Ex. A at 2-3, and 872 removals under 8 U.S.C. § 1225 reported by ICE<sup>1</sup>, Ex. B at 2 (ICE Report).

DHS also reported, for the month of December 2021, 2,124 total Haitian nationals expelled under Title 42 and removed or returned under Title 8 authorities (including 8 U.S.C. § 1225). This figure includes 1,899 Haitian national Title 42 expulsions and 12 Title 8 removals and returns reported by CBP, Ex. A at 2-3, and 213 removals of Haitian nationals under 8 U.S.C. § 1225 reported ICE, Ex. B at 2.

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<sup>1</sup> ICE removals include noncitizens processed for Expedited Removal (ER) or Voluntary Return (VR) that are turned over to ICE Enforcement and Removal Operations (ERO) for detention. Noncitizens processed for ER and not detained by ERO or VR after June 1, 2013 and not detained by ERO are primarily processed by CBP, and would be included within CBP's data. Ex. B.

As explained in Exhibit A, CBP's Title 8 removals and returns include several categories of removals and returns conducted by OFO and USBP, including expedited removals, reinstated orders of removal, voluntary returns, returns pursuant to 8 U.S.C. § 1225(b)(2)(C), withdrawals of applications for admission, etc. Ex. A at 2-3. ICE's removals under section 1225 represent expedited removals. Ex. B at 2. The number of individuals returned under 8 U.S.C. § 1225(b)(2)(C) was 191 individuals.

### **3. Total Detention Capacity and Current Usage Rate**

For the month of December 2021, DHS reported that its total detention capacity was approximately 34,868, a figure combining CBP's approximate holding capacity of 5,935, Ex. A at 3, and ICE's current approximate funded detention capacity of 28,933,<sup>2</sup> Ex. B at 1. CBP's approximate holding capacity is the sum of OFO's approximate holding capacity, 935, and USBP's average holding capacity, 5,000. Ex. A at 3 & n.11.

DHS reported that the current average daily usage rate throughout December 2021 for CBP detention was 32.8% for OFO facilities and 270% for Border Patrol facilities, Ex. A at 3 & n.11, and approximately 75.3% for ICE detention facilities. *See* Ex. B at 1 (rate equals average daily population of 21,793 for the month of December 2021 over the current approximate total detention capacity of 28,933).

Regarding Haitian nationals, for the month of December 2021, DHS reported that, for CBP holding capacity, there was a daily average of 2 Haitian nationals in OFO custody, or less than 1% of overall OFO holding capacity, and a daily average of 1,125 Haitian nationals held in Border

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<sup>2</sup> ICE has approximately 34,000 funded detention beds available nationwide but its full inventory of bedspace is currently limited to approximately 28,933 beds, due to various court orders limiting the intake of noncitizen detainees, an increase in detention facility contract terminations, detention facility contract modifications, and the ongoing COVID-19 pandemic. Ex. B at 1; *see, e.g., Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. Apr. 20, 2020).

Patrol facilities, which represents 22.5% of overall USBP average holding capacity. Ex. A at 3 & n.11. With respect to ICE, there was a monthly average daily population of 936 Haitian nationals in ICE custody, Ex. B at 1, indicating that Haitians accounted for an average daily usage rate of 3.2% of current approximate funded ICE detention capacity (i.e., 936 over ICE's current approximate funded detention capacity of 28,933).

#### **4. Total Monthly Number of Applicants for Admission Under § 1225**

For the month of December 2021, DHS reported that the total number of applicants for admission under Section 1225 encountered<sup>3</sup> by CBP was 100,251. Ex. A at 4. This figure is consistent with CBP's total number of noncitizen encounters subtracting its Title 42 expulsions. Ex. A at 4 n.12; *supra* §§ 1, 2.

Regarding Haitian nationals, DHS reported that the total number of Haitian national applicants for admission under Section 1225 encountered by CBP in December 2021 was 5,176. Ex. A at 4.

#### **5. Total Monthly Number of Applicants for Admission Under § 1225 Paroled Into the United States**

For the month of December 2021, DHS reported that the total number of applicants for admission under Section 1225 paroled into the United States was 23,098. This figure combines 22,790 total CBP grants of parole in December 2021 for noncitizens apprehended or encountered at the Southwest Border, Ex. A. at 4, and 308 ICE grants of parole, Ex. B at 3.

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<sup>3</sup> An applicant for admission is defined as “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters).” 8 U.S.C. § 1225(a)(1). Thus, an applicant for admission may include noncitizens that have never been encountered by CBP. At this time, CBP does not have a mechanism to track applicants for admission in the United States that are not encountered by CBP. Ex. A at 4 n.12. All references in this document to “applicants for admission” refer to noncitizen applicants for admission encountered at or in-between POEs by CBP.

Regarding Haitian nationals, for the month of December 2021, DHS reported that the total number of Haitian applicants for admission under Section 1225 paroled into the United States was 479. This number combines 455 CBP grants of parole for Haitian nationals at the Southwest Border, 16, Ex. A at 4, with 24 ICE grants of parole for Haitian nationals transferred to ICE custody after being apprehended or encountered by CBP at the Southwest Border, Ex. B at 3.

Regarding the number of applicants paroled into the United States based on DHS's lack of detention capacity, Border Patrol reported 431 noncitizens paroled at the Southwest Border in December 2021 due to lack of detention space. Ex. A at 5. However, this number may not account for all such paroles: Lack of detention capacity is not a required field in BP's system of record. Ex. A at 5 n.18. Some paroles were documented in the system using a descriptor of "lack of space," but since it is not a required field, the descriptor is not consistently utilized and documented in the system. *Id.* As Defendants previously explained, "The number of noncitizens paroled or released into the United States by CBP based on DHS's lack of detention capacity is not a reliable data point in CBP's electronic systems of records. CBP's data processes do not accurately capture release or parole data uniformly." ECF No. 118-2 ¶ 5.

Data on the number of applicants paroled into the United States based on lack of detention capacity from OFO is currently unavailable. Ex. A at 5 n.13. In the case of OFO encounters, the relevant decision not to detain is made by ICE. *Id.* OFO is able to provide data on noncitizens paroled and released into the United States; however, is not able to provide specific reasons as to why detention was declined. *Id.* Specific reasons for denial are not captured in the agency's electronic systems of record nor is it provided when that decision is reached. *Id.*; *see* ECF No. 118-2 ¶ 5.

As for ICE, "ICE's data systems have not captured release or parole based on lack of

detention capacity since September 2019” and therefore “pulling that data from ICE systems” through “the present is impossible.” ECF No. 118-1 ¶ 11. ICE’s data systems capture “the following release reasons: Bonded Out, Order of Recognizance, Order of Supervision, Paroled, or Prosecutorial Discretion.” Ex. B at 5. ICE does not track the number of applicants paroled or released into the United States based on DHS’s lack of detention capacity. *Id.* ICE officers are not required to note in the subject’s record any information associated with the rationale for the release determination. ECF No. 118-1 ¶ 11. “Therefore, attempting to re-create that data ... through manual review or otherwise, would be operationally impossible because the data ... does not exist in any form.” *Id.*

Regarding the number of Haitian applicants paroled into the United States based on DHS’s lack of detention capacity, Border Patrol reported 8 paroles of Haitian nationals at the Southwest Border in December 2021 due to lack of detention space. Ex. A at 5. Again, however, this number may be incomplete, as lack of detention capacity is not a required field in BP’s system of record. Ex. A at 5 n.18; *see* ECF No. 118-2 ¶ 5.

Data on the number of the number of Haitian applicants paroled into the United States in December 2021 based on lack of detention capacity is currently unavailable from OFO, as the relevant decision not to detain is made by ICE and the reasons are not captured in OFO’s electronic record-keeping system. Ex. A at 5 n.13; *see* ECF No. 118-2 ¶ 5. Such data is likewise unavailable from ICE, as explained above. ECF No. 118-1 ¶ 11; Ex. B at 5.

**6. Total Monthly Number of Applicants for Admission Under § 1225 Released Into the United States, Paroled or Otherwise**

For the month of December 2021, DHS reported that the total number of applicants for admission under Section 1225 released into the United States, paroled or otherwise, was 74,799, a figure reflecting CBP’s 55,626 total releases across all categories for the month of December 2021,

Ex. A at 5,<sup>4</sup> combined with ICE's 19,173 total releases of noncitizens transferred to it from CBP following their apprehension or encounter at the Southwest Border for the month of December 2021, Ex. B at 3.

Regarding Haitian nationals, for the month of December 2021, DHS reported that the total number of Haitian national applicants for admission under Section 1225 released into the United States, paroled or otherwise, was 1,731. This figure combines 1,542 releases of Haitian nationals by CBP at the Southwest Border, Ex. A at 5, with 189 releases by ICE of Haitian nationals transferred to it from CBP following their apprehension or encounter at the Southwest Border, Ex. B at 3.

Regarding the number of applicants released into the United States, paroled or otherwise, based on DHS's lack of detention capacity, Border Patrol reported a total of 12,008 noncitizens released at the Southwest Border in December 2021 due to lack of detention space (431 released on parole and 11,577 released on Notice to Appear – Order of Release on Recognizance (NTA/OR)). Ex. A at 5. However, this number may not account for all such releases: Lack of detention capacity is not a required field in BP's system of record. Ex. A at 5 nn.16-18. Some releases were documented in the system using a descriptor of "lack of space," but since it is not a required field, the descriptor is not consistently utilized and documented in the system. *Id.* at 5 nn.16-18; *see* ECF No. 118-2 ¶ 5.<sup>5</sup>

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<sup>4</sup> This report does not include data on unaccompanied alien children (UCs), as defined in 6 U.S.C. § 279(g), who the Court recognized are not amenable to MPP, ECF No. 94 at 9, and who are subject to special processing and are transferred to U.S. Department of Health and Human Services Custody pursuant to the Trafficking Victims Protection Reauthorization Act. *See* 8 U.S.C. §§1232(a)(5)(D), 1232(b)(3), 1232(c)(2)(A), 1232(c)(3); *see also* CBP, Southwest Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (providing statistics on UCs encountered by CBP).

<sup>5</sup> Similarly, as CBP's report reflects, some noncitizens were in previous months released on



Data from OFO on the number of applicants released into the United States, paroled or otherwise, based on lack of detention capacity is currently unavailable. Ex. A at 5 n.13. In the case of OFO encounters, the relevant decision not to detain is made by ICE. *Id.* OFO is able to provide data on noncitizens paroled and released into the United States; however, is not able to provide specific reasons as to why detention was declined. *Id.* Specific reasons for denial are not captured in the agency’s electronic systems of record nor is it provided when that decision is reached. *Id.*; *see* ECF No. 118-2 ¶ 5.

As for ICE, “ICE’s data systems have not captured release or parole based on lack of detention capacity since September 2019” and therefore “pulling that data from ICE systems” through “the present is impossible.” ECF No. 118-1 ¶ 11. ICE’s data systems capture “the following release reasons: Bonded Out, Order of Recognizance, Order of Supervision, Paroled, or Prosecutorial Discretion.” Ex. B at 5. ICE does not track the number of applicants paroled or released into the United States based on DHS’s lack of detention capacity. *Id.* ICE officers are not required to note in the subject’s record any information associated with the rationale for the release determination. ECF No. 118-1 ¶ 11. “Therefore, attempting to re-create that data ... through manual review or otherwise, would be operationally impossible because the data ... does not exist in any form.” *Id.*

Regarding the number of Haitian applicants released into the United States, paroled or otherwise, based on DHS’s lack of detention capacity, Border Patrol reported a total of 433 Haitian nationals released at the Southwest Border in December 2021 due to lack of detention space (425

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Notices to Report (NTRs) when BP holding capacity was exceeded or when resources became overwhelmed; however, lack of detention capacity is not a required field in BP’s system of record. Further, no noncitizens were released on NTR by BP in December 2021. Ex. A at 5 & n.17; *see* ECF No. 118-2 ¶ 5.

released on NTA/OR and 8 paroles). Ex. A at 5. However, this number may not account for all such releases: Lack of detention capacity is not a required field in BP's system of record. Ex. A at 5 nn. 16-18. Some releases were documented in the system using a descriptor of "lack of space," but since it is not a required field, the descriptor is not consistently utilized and documented in the system. *Id.* at 5 nn. 16, 18; *see* ECF No. 118-2 ¶ 5.<sup>6</sup>

Data on the number of the number of Haitian applicants released into the United States in December 2021 based on lack of detention capacity is currently unavailable from OFO, as the relevant decision not to detain is made by ICE and the reasons are not captured in OFO's electronic record-keeping system. Ex. A at 5 n.13; *see* ECF No. 118-2 ¶ 5. Such data is likewise unavailable from ICE, as explained above. ECF No. 118-1 ¶ 11; Ex. B at 5.

Dated: January 14, 2022

Respectfully submitted,

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<sup>6</sup> Similarly, as CBP's report reflects, some Haitian nationals were released on NTRs in previous months when BP holding capacity was exceeded or when resources became overwhelmed; however, lack of detention capacity is not a required field in BP's system of record. Further, no Haitian nationals were released on NTR by BP in December 2021. Ex. A at 5 & n.17; *see* ECF No. 118-2 ¶ 5.

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2022, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Northern District of Texas by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Joseph A. Darrow  
JOSEPH A. DARROW  
U.S. Department of Justice

# Exhibit A

**Texas v. Biden Monthly Report****Reporting Period: December 1, 2021 –December 31, 2021****(1) The total monthly number of encounters<sup>1</sup> at the southwest border (SWB);**

Encounter data includes U.S. Border Patrol (USBP) Title 8 Apprehensions<sup>2</sup> between the ports of entry along the SWB, Office of Field Operations (OFO) Title 8 Inadmissibles<sup>3</sup> at land ports of entry along the SWB, and Title 42 Expulsions<sup>4</sup> at and between the ports of entry along the SWB.

December 2021 as of January 3, 2022	All Citizenships		Haitian Nationals	
	Title 8	Title 42	Title 8	Title 42
<b>Office of Field Operations</b>	<b>6,348</b>	<b>2,306</b>	<b>35</b>	<b>1</b>
El Paso Field Office	525	190	7	1
Laredo Field Office	1,213	1,140	22	
San Diego Field Office	4,276	746	6	
Tucson Field Office	334	230		
<b>U.S. Border Patrol</b>	<b>93,903</b>	<b>76,283</b>	<b>5,141</b>	<b>1,898</b>
Big Bend Sector	758	2,659	14	42
Del Rio Sector	22,756	10,449	637	822
El Centro Sector	1,460	2,675	19	8
El Paso Sector	8,072	11,399	1,886	793
Laredo Sector	621	6,683		
Rio Grande Valley Sector	24,447	19,397	9	7
San Diego Sector	4,719	8,863	67	16
Tucson Sector	2,673	13,086		
Yuma Sector	28,397	1,072	2,509	210
<b>Total Encounters</b>	<b>100,251</b>	<b>78,589</b>	<b>5,176</b>	<b>1,899</b>

<sup>1</sup> The sum of Title 8 apprehensions/inadmissible aliens and expulsions.

<sup>2</sup> Apprehension refers to the physical control or temporary detainment of a person who is not lawfully in the U.S. which may or may not result in an arrest.

<sup>3</sup> Inadmissible refers to individuals encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe.

<sup>4</sup> Expulsions refers to individuals encountered by USBP and OFO and expelled to the country of last transit or home country in the interest of public health under Title 42 U.S.C. 265.

**(2) The total monthly number of aliens expelled under Title 42, Section 1225, or under any other statute;**

- *Title 42 expulsions at and between the ports of entry along the SWB<sup>5</sup>*

December 2021 as of January 3, 2022	All Citizenships	Haitian Nationals
	Title 42	Title 42
<b>Office of Field Operations</b>	<b>2,306</b>	<b>1</b>
El Paso Field Office	190	1
Laredo Field Office	1,140	
San Diego Field Office	746	
Tucson Field Office	230	
<b>U.S. Border Patrol</b>	<b>76,283</b>	<b>1,898</b>
Big Bend Sector	2,659	42
Del Rio Sector	10,449	822
El Centro Sector	2,675	8
El Paso Sector	11,399	793
Laredo Sector	6,683	
Rio Grande Valley Sector	19,397	7
San Diego Sector	8,863	16
Tucson Sector	13,086	
Yuma Sector	1,072	210
<b>Total Encounters</b>	<b>78,589</b>	<b>1,899</b>

- *Southwest Land Border Removals/Returns under Title 8, based on encounter date<sup>6</sup>*

Total Removals and Returns Under Title 8	All Citizenships	Haitian Nationals
<b>U.S. Border Patrol</b>	<b>5,266</b>	<b>12</b>
Bag and Baggage <sup>7</sup>	49	
Voluntary Return <sup>8</sup>	2,013	
Expedited Removal	1,593	6
Reinstatement of Removal	1,448	6
Returns Pursuant to 8 U.S.C. 1225(B)(2)(C)	191	
<b>Office of Field Operations</b>	<b>1,615</b>	
Bag and Baggage	1	
Voluntary Return	76	
Expedited Removal	296	
Reinstatement of Removal	6	
Withdrawal of Application for Admission	1,236	

<sup>5</sup> Same as Title 42 expulsion data provided in response to 1 above.

<sup>6</sup> Indicates that the noncitizen was encountered during the reporting period (December 1, 2021 – December 31, 2021).

<sup>7</sup> When a noncitizen encountered or apprehended by CBP has been previously ordered removed by an immigration judge and the order was never executed (i.e., in absentia). The removal order may be immediately executed by CBP or CBP may turn the noncitizen over to ICE for removal.

<sup>8</sup> Constitutes a request by a non-citizen to be permitted to return to their country of citizenship on a voluntary basis, in lieu of being formally removed or placed into removal proceedings.

Returns Pursuant to 8 U.S.C. 1225(B)(2)(C)		
Total	<b>6,881</b>	<b>12</b>

**(3) Defendants' total detention capacity as well as current usage rates;***OFO Holding Capacity – Southwest Border in Custody<sup>9</sup>*

December 2021 Daily Average In Custody All Citizenships	December 2021 Daily Average In Custody Haitian Nationals
306 (32.8%) <sup>10</sup>	2 (<1%)

*USBP Average Daily Subjects In Custody by Southwest Border Sector<sup>11</sup>*

SECTOR	December 2021 Daily Average In Custody All Citizenships	December 2021 Daily Average In Custody Haitian Nationals
<b>Big Bend</b>	44	3
<b>Del Rio</b>	1,836	126
<b>El Centro</b>	418	5
<b>El Paso</b>	1,931	367
<b>Laredo</b>	936	258
<b>Rio Grande</b>	4,071	5
<b>San Diego</b>	1,191	9
<b>Tucson</b>	539	8
<b>Yuma</b>	2,419	344
<b>Total</b>	<b>13,385</b>	<b>1,125</b>

<sup>9</sup> Represents an estimate of each cell's coded occupancy limit, as outlined in technical design standards when constructed, multiplied by the total number of cells for all ports of entry within each field office. This number does not account for the unique circumstances that may limit the occupancy of a given cell (e.g., high risk, nursing/pregnant, transgender, unaccompanied minor, etc.) nor does it reflect operational limitations that affect a port's capacity to detain. CBP's capacity to detain individuals in its short-term facilities depends on many factors, including: demographics of the individual in custody; medical or other needs of individuals in custody; ability of ICE ERO (or, if an unaccompanied child, the U.S. Department of Health and Human Services) to transfer individuals out of CBP custody; and OFO's available resources to safely process and hold individuals.

<sup>10</sup> Represents the average number of travelers in custody on a daily basis averaged over the 30-day period, at all Southwest Border Field Office locations. Travelers include inadmissible individuals, lawful permanent residents, asylees, refugees, and United States Citizens who are being detained to verify wants, warrants, criminal, administrative or other judicial process.

<sup>11</sup> U.S. Border Patrol facilities, such as stations and central processing centers, provide short-term holding capacity for the processing and transfer of individuals encountered by agents. Maximum facility capacity along the southwest border is approximately 5,000, which assumes a homogenous population and full operating status at all facilities. Actual capacity fluctuates constantly based on characteristics of in-custody population, to include demographics, gender, criminality, etc. The average percentage of subjects in custody on a daily basis for all citizenships is 270%, which is averaged over the 30-day period and includes all Southwest Border Sector locations.



December 2021 as of January 3, 2022	All Citizenships	Haitian Nationals
	Title 8	Title 8
<b>Office of Field Operations</b>	<b>6,348</b>	<b>35</b>
El Paso Field Office	525	7
Laredo Field Office	1,213	22
San Diego Field Office	4,276	6
Tucson Field Office	334	
<b>U.S. Border Patrol</b>	<b>93,903</b>	<b>5,141</b>
Big Bend Sector	758	14
Del Rio Sector	22,756	637
El Centro Sector	1,460	19
El Paso Sector	8,072	1,886
Laredo Sector	621	
Rio Grande Valley Sector	24,447	9
San Diego Sector	4,719	67
Tucson Sector	2,673	
Yuma Sector	28,397	2,509
<b>Total Encounters</b>	<b>100,251</b>	<b>5,176</b>

(5) The total monthly number of “applicants for admission” under Section 1225 paroled into the United States; and

	December 2021 Paroles All Citizenships	December 2021 Paroles Haitian Nationals
Southwest Border Paroles		
<b>U.S. Border Patrol Total</b>	<b>18,270</b>	<b>421</b>
Parole Disposition	18,270	421
<b>Office of Field Operations Total</b>	<b>4,520</b>	<b>34</b>
NTA and Paroled into the U.S. on a case-by-case basis pursuant to 8 U.S.C. § 1182(d)(5)	3,816	34
Parole Disposition	704	
<b>Total</b>	<b>22,790</b>	<b>455</b>

<sup>12</sup> An applicant for admission is defined as “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters).” 8 U.S.C. § 1225(a)(1). Thus, an applicant for admission may include noncitizens that have never been encountered by CBP. At this time, CBP does not have a mechanism to track all applicants for admission in the United States that are not encountered by CBP. CBP has included the same data as the Title 8 encounter data provided in response to 1 above.

Southwest Border Releases	December 2021 Releases All Citizenships	December 2021 Releases Haitian Nationals
U.S. Border Patrol Total	<b>51,106</b>	<b>1,508</b>
Notice To Report <sup>15</sup>		
Notice to Appear - Order of Release on Recognizance	32,836	1,087
Parole Disposition	18,270	421
Office of Field Operations Total	<b>4,520</b>	<b>34</b>
NTA and Paroled into the U.S. on a case-by-case basis pursuant to 8 U.S.C. § 1182(d)(5)	3,816	34
Parole Disposition	704	
Parole Disposition (ICE Declined to Detain Indicator)	5	
Total	<b>55,626</b>	<b>1,542</b>

**USBP Southwest Border ORs, NTRs, and Parole Subjects by Month**

Categories		December 2021 All Citizenships	December 2021 Haitian Nationals
NTA/OR	"Lack of Space"	11,577	425
		21,566	686
<b>NTA/OR Total<sup>16</sup></b>		<b>33,143</b>	<b>1,111</b>
<b>NTR Total<sup>17</sup></b>		<b>0</b>	<b>0</b>
Parole	"Lack of Space"	431	8
		17,831	416
<b>Parole Total<sup>18</sup></b>		<b>18,262</b>	<b>424</b>

<sup>13</sup> All numbers in reporting requirement 6 for Office of Field Operations are “based on encounter date,” as defined above. The parole disposition (ICE Declined to Detain Indicator) row within the “Office of Field Operations Total” is *not* in addition to the preceding rows. This is not indicative of all individuals paroled into the United States due to an ICE declination to detain. This is merely those that requested to be paroled at a port of entry and a custody determination was made by ICE not to detain. When processing in OFO systems, this is not a field required for input. OFO is able to provide data on noncitizens paroled and released into the United States; however, is not able to provide specific reasons as to why detention was declined. Specific reasons for denial are not captured in CBP’s electronic systems of record nor is it provided when that decision is reached.

<sup>14</sup> Given that the data reported in reporting requirement number 6 is inclusive of the data reported in reporting requirement number 5, we have only included the data related to the reasons for release in response to reporting requirement number 6. In addition, the CBP releases may have occurred under Section 1225 or Section 1226, but that specific data is not available at this time for purposes of this report.

<sup>15</sup> Individuals who are screened by CBP, and after criminal and immigration records checks are conducted to determine if the subject is a threat to national security or public safety, are then released and instructed to report to U.S. Immigration and Customs Enforcement (ICE) for continued processing.

<sup>16</sup> NTA/OR: Lack of detention capacity is not a required field in USBP’s system of record. Some NTA/ORs were documented in the system using a descriptor of “lack of space” when ICE declined custody due to lack of detention capacity, but since it is not a required field, the descriptor is not consistently utilized and documented in the system. Some NTA/ORs may have issued due to a lack of detention capacity but not documented as such in the system.

<sup>17</sup> NTR: Lack of detention capacity is not a required field in USBP’s system of record and is not captured in the system for NTRs; however, NTRs were issued in limited sectors on a case-by-case basis when USBP holding capacity was exceeded or when resources became overwhelmed.

<sup>18</sup> Parole: Lack of detention capacity is not a required field in USBP’s system of record. Some Paroles were documented in the system using a descriptor of “lack of space,” but since it is not a required field, the descriptor is not consistently utilized and documented in the system.

# Exhibit B

# ERO Custody Management Division

## Population Counts from December 1, 2021 through December 31, 2021

Source: ICE Integrated Decision Support (IIDS), 01/03/2022

IIDS is a data warehouse that contains dynamic data extracts from the Enforcement Integrated Database (EID).

FY2022 data: IIDS as of 01/03/2022; EID data through 01/02/2022

Average Daily Population is calculated by the total daily population divided by the number of days in the month

Total Daily Population includes single adults and individuals in family units

ERO is currently appropriated sufficient funding for approximately 34,000 detention beds nationwide, to support its mission to enforce immigration law. ICE's access to its full inventory of bedspace is severely limited due to various court orders limiting the intake of noncitizen detainees, an increase in detention facility contract terminations, detention facility contract modifications, and the ongoing COVID-19 pandemic. Specifically, ICE's Pandemic Response Requirements (PRR) for its detention facilities, which are informed by the Centers for Disease Control and Prevention's COVID-19 guidelines, require that facilities undertake efforts to reduce populations to approximately 75% capacity. Last year, the U.S. District Court for the Central District of California issued a nationwide preliminary injunction recognizing the 75% capacity limit, and ordering ICE to maintain additional strict standards to reduce the risk of COVID-19 infection. See *Fraihat v. ICE*, 445 F.Supp.3d 709 (C.D. Cal. Apr. 20, 2020). In light of these mandates, ICE's currently available bedspace inventory is only approximately 28,933 beds

Month	December
Monthly Average Daily Population (ADP)	21,793
Monthly Average Daily Population (ADP) of Haitian Detainees	936

Date	Daily Population	Haitian Daily Population
12/1/2021	22,488	1,348
12/2/2021	22,230	1,341
12/3/2021	22,255	1,311
12/4/2021	22,072	1,327
12/5/2021	22,524	1,315
12/6/2021	22,852	1,319
12/7/2021	22,568	1,155
12/8/2021	22,437	1,105
12/9/2021	22,029	1,068
12/10/2021	21,533	1,023
12/11/2021	21,451	1,009
12/12/2021	21,857	1,001
12/13/2021	22,099	983
12/14/2021	21,827	970
12/15/2021	21,558	942
12/16/2021	21,339	919
12/17/2021	21,111	878
12/18/2021	20,889	877
12/19/2021	21,030	881
12/20/2021	21,097	813
12/21/2021	20,864	673
12/22/2021	20,526	651
12/23/2021	20,616	653
12/24/2021	21,020	648
12/25/2021	21,376	665
12/26/2021	21,756	696
12/27/2021	21,789	698
12/28/2021	22,583	689
12/29/2021	22,508	686
12/30/2021	22,791	680
12/31/2021	22,503	685

**ERO LESA Statistical Tracking Unit**

For Official Use Only (FOUO)/Pre-decisional

**Texas v Biden (MPP) - Reporting Requirement - 01/07/2022****FY2022 December ICE  
Removals of Expedited  
Removals**

<b>Case AOR</b>	<b>3-Dec</b>
Atlanta	37
Baltimore	
Boston	3
Buffalo	
Chicago	9
Dallas	29
Denver	18
Detroit	5
El Paso	53
Harlingen	113
Houston	53
HQ	1
Los Angeles	4
Miami	16
New Orleans	339
New York City	1
Newark	4
Philadelphia	4
Phoenix	86
Salt Lake City	5
San Antonio	14
San Diego	61
San Francisco	3
Seattle	10
St. Paul	1
Washington	3
<b>Total</b>	<b>872</b>

**FY2022 December ICE  
Removals of Expedited  
Removals of Haitians**

<b>Case AOR</b>	<b>3-Dec</b>
Atlanta	3
Baltimore	-
Boston	-
Buffalo	-
Chicago	-
Dallas	-
Denver	-
Detroit	-
El Paso	-
Harlingen	-
Houston	15
HQ	-
Los Angeles	-
Miami	-
New Orleans	183
New York City	-
Newark	-
Philadelphia	-
Phoenix	1
Salt Lake City	-
San Antonio	-
San Diego	9
San Francisco	-
Seattle	2
St. Paul	-
Washington	-
<b>Total</b>	<b>213</b>

**ERO-LESA Statistical Tracking Unit**  
**For Official Use Only (FOUO)/Pre-decisional**  
**Texas v Biden (MPP) - Reporting Requirement - 01/07/2022**

ICE Initial Book Ins in FY2022 December with Arresting Agency of CBP	<b>3-Dec</b>
	30,204

ICE Initial Book Ins of Haitians in FY2022 December) with Arresting Agency of CBP	<b>3-Dec</b>
	303

ICE Initial Book Ins in FY2022 December with Arresting Agency of CBP with a previously occurring USBP Apprehension or CBP OFO Encounter at the Southwest Border	<b>3-Dec</b>
	29,597

ICE Initial Book Ins of Haitians in FY2022 December with Arresting Agency of CBP with a previously occurring USBP Apprehension or CBP OFO Encounter at the Southwest Border	<b>3-Dec</b>
	218

<b>FY2022 YTD</b>	01/02/2022 ICE Currently Detained	10,029
	FY2022 ICE Final Release	19,173
	<i>Bonded out</i>	14,701
	<i>Order of Recognizance</i>	265
	<i>Order of supervision</i>	3,899
	<i>Paroled</i>	308
	FY2022 ICE Removal	308

<b>FY2022 YTD</b>	01/02/2022 ICE Currently Detained	29
	FY2022 ICE Final Release	189
	<i>Bonded out</i>	-
	<i>Order of Recognizance</i>	161
	<i>Order of supervision</i>	4
	<i>Paroled</i>	24
	FY2022 ICE Removal	-

## **ERO-LESA Statistical Tracking Unit**

### **For Official Use Only (FOUO)/Pre-decisional**

### **Texas v Biden (MPP) - Reporting Requirement - 01/07/2022**

#### **Footnotes**

FY2022 ICE Initial Book Ins data are updated through 01/02/2022 (IIDS run date 01/03/2022; EID as of 01/03/2022). ICE Currently Detained National Docket data are a snapshot as of 01/02/2022 (IIDS run date 01/03/2022; EID as of 01/03/2022).

FY2022 ICE Final Releases data are updated through 01/02/2022 (IIDS run date 01/03/2022; EID as of 01/03/2022).

FY2022 ICE Removals data are updated through 01/02/2022 (IIDS run date 01/03/2022; EID as of 01/03/2022).

Current fiscal year data, FY2022, will reflect updated values until the FY2022 data lock in Oct 2022.

USBP Apprehensions FY14 - FY22 YTD uploaded to IIDS on 01/03/2022, with FY22 apps through 01/02/2022.

Office of Field Operations (OFO) Southwest Border Operations (SBO) Enforcement Encounters Report with Subject-level details for FY22TD through 01/03/2022.

For the purpose of this report, only the most recent status for an individual who had an ICE Initial Book Ins per fiscal year with Arresting Agency of CBP with a previously occurring USBP Apprehension or CBP OFO Encounter at the Southwest Border is included in the summary count. I.e., Individual with multiple initial book-ins within the fiscal year pertinent to this litigation should have the same reported status and not be included in multiple status summary counts.

The person record for 985 ICE Initial Book Ins in FY2022 pertinent to this litigation could not be matched to an ICE Current Detention (snapshot as of 01/02/2022), FY2022 ICE Final Release or FY2022 ICE Removal occurring after the ICE Initial Book In date.

ICE Initial Book Ins are matched to USBP Apprehensions and/or OFO Encounters based on subject-level details (Civilian record) where the USBP Apprehension and/or OFO Encounter occur prior to the ICE Initial Book In date. STU cannot confirm that the ICE Initial Book In is directly related to the matched USBP Apprehension and/or OFO Encounter.

#### **ICE Initial Book Ins**

ICE Detention data exclude ORR transfers/facilities, as well as U.S. Marshals Service Prisoners.

All stats are pulled based on Current Program which attributes all cases back to the Program of the processing officer of the event. However, if Current Program = OPL, XXX, ZZZ, or null, then Event Program is used.

The "CBP" Arresting Agency includes the following programs: Border Patrol, Inspections, Inspections-Air, Inspections-Land, and Inspections-Sea.

Individuals may have more than one ICE Initial Book Ins relevant to this litigation. All have been included.

Individuals may have more than one USBP Apprehensions and/or OFO Encounters relevant to this litigation. The latest occurring Apprehension or Encounter is included.

#### **ICE Detained National Docket**

ICE Detention data exclude ORR transfers/facilities, as well as U.S. Marshals Service Prisoners.

ICE Initial Book Ins are matched to ICE Current Detention record based on person-level details (Person record) where the ICE Initial Book In occur prior to the ICE Current Detention date. The ICE Initial Book In may not be directly related to the matched ICE Current Detention.

#### **ICE Final Releases**

An ICE Final Release is defined as a Final Bookout that reflects one of the following release reasons: Bonded Out, Order of Recognizance, Order of Supervision, Paroled, or Prosecutorial Discretion. All Case Statuses are included.

ICE Detention data exclude ORR transfers/facilities and U.S. Marshals Service Prisoners.

An alien may have multiple releases; only the most recent release is included in this report.

ICE Initial Book Ins are matched to ICE Final Release record based on person-level details (Person record) where the ICE Initial Book In occur prior to the ICE Final Release date. The ICE Initial Book In may not be directly related to the matched ICE Final Release.

ICE does not track the number of applicants paroled or released into the United States based on DHS' s lack of detention capacity.

### **ICE Removals**

ICE Removals include Returns. Returns include Voluntary Returns, Voluntary Departures and Withdrawals Under Docket Control.

ICE Removals include aliens processed for Expedited Removal (ER) or Voluntary Return (VR) that are turned over to ERO for detention. Aliens processed for ER and not detained by ERO or VR after June 1st, 2013 and not detained by ERO are primarily processed by Border Patrol.

Starting in FY2009, ICE began to “lock” removal statistics at the end of each fiscal year and counted only the aliens whose removal or return was already confirmed. Aliens removed or returned in that fiscal year but not confirmed until after the end of that fiscal year were excluded from the locked data and thus from ICE statistics. To ensure an accurate and complete representation of all removals and returns, ICE will include the removals and returns confirmed after the end of that fiscal year into the next fiscal year. The number of removals in FY2009, excluding the "lag" from FY2008, was 387,790. The number of removals in FY2010, excluding the "lag" from FY2009, was 373,440. This number does not include 76,732 expedited removal cases which ICE closed on behalf of CBP in FY2010. Of those 76,732, 33,900 cases resulted from a joint CBP/ICE operation in Arizona. ICE spent \$1,155,260 on those 33,900 cases. The number of removals in FY2011, excluding the "lag" from FY2010, was 385,145. The number of removals in FY2012, excluding the "lag" from FY2011, was 402,919. The number of removals in FY2013, excluding the "lag" from FY2012, was 363,144. The number of removals in FY2014, excluding the "lag" from FY2013, was 311,111. The number of removals in FY2015, excluding the "lag" from FY2014, was 231,250. The number of removals in FY2016, excluding the "lag" from FY2015, was 235,524. The number of removals in FY2017, excluding the “lag” from FY2016, was 220,649. The number of removals in FY2018, excluding the “lag” from FY2017, was 252,405. The Number of removals in FY2019, excluding the "lag" from FY2018, was 262,591. The number of removals in FY2020, excluding the “lag” from FY2019, was 177,516. The number of removals in FY2021, excluding the “lag” from FY2020, was 55,355.

FY Data Lag/Case Closure Lag is defined as the physical removal of an alien occurring in a given month; however, the case is not closed in EARM until a subsequent FY after the data is locked. Since the data from the previous FY is locked, the removal is recorded in the month the case was closed and reported in the next FY Removals. This will result in a higher number of recorded removals in an FY than actual departures.

All stats are pulled based on Current Program which attributes all cases back to the Program of the processing officer of the event. However, if Current Program = OPL, XXX, ZZZ, or null, then Event Program is used.

Expedited removals include cases have one of the following case categories:

[8F] Expedited Removal [8G] Expedited Removal - Credible Fear Referral, [8H] Expedited Removal - Status Claim Referral, [8K] Expedited Removal Terminated due to Credible Fear Finding / NTA Issued.

Month break out of Expedited Removals is based on fiscal month of departure.

ICE Initial Book Ins are matched to ICE Removal record based on person-level details (Person record) where the ICE Initial Book In occur prior to the ICE Removal date. The ICE Initial Book In may not be directly related to the matched ICE Removal.