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**OFFICE OF THE
ATTORNEY
GENERAL
U.S. VIRGIN
ISLANDS**

September 23, 2021

Via E-mail and U.S. Mail

President Joseph Biden
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Re: Haitian Refugees



Dear President Biden and Secretary Mayorkas:

We, the Attorneys General of Illinois, the District of Columbia, Nevada, New York, the U.S. Virgin Islands, California, Connecticut, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington write to you concerning the urgent circumstances facing thousands of Haitian migrants currently seeking the humanitarian aid of the United States at our borders. Like many Americans, we were grateful to learn that your administration will investigate the tactics of U.S. immigration officials on horseback who were recently filmed and photographed charging at—and apparently attempting to whip—Haitian migrants as they sought to bring food to their families massed under a bridge in Del Rio, Texas.¹ We trust that this investigation will result in the cessation of these inhumane tactics, which do not reflect the values of our nation and our respective states. Likewise, we commend the

¹ See Alexandra Petri, *Homeland Security Investigates Border Patrol's Treatment of Haitian Immigrants*, N.Y. TIMES (Sept. 20, 2021), <https://www.nytimes.com/2021/09/20/us/politics/haitians-border.html>.

administration for its recent decision to greatly increase the number of refugees who will be allowed into the United States in the coming fiscal year.²

While we are confident that your administration will address the alarming practices recently used to apprehend Haitian migrants at the border, we remain deeply concerned by the administration's continuation of a summary deportation policy (ostensibly supported by 42 U.S.C. § 265 and related rules) that is sending many Haitians back to a country facing one of the worst series of crises in its history. Haiti is experiencing unprecedented political upheaval from this summer's presidential assassination and is struggling yet again to rebuild after a destabilizing earthquake. These unexpected events have prompted a new influx of Haitian nationals seeking refuge in our country. We understand that the administration must constantly reconsider and formulate responses to a challenging crisis that is unfolding day by day. However, individuals seeking asylum or other humanitarian assistance in our country deserve our respect and compassion, and they should not be treated differently from other migrants based on their country of origin. Haitians deserve the same due process as all others attempting to immigrate or flee to the United States. The circumstances of every Haitian seeking refuge here should be assessed on a case-by-case basis. This individualized evaluation should factor in both the time a person has been away from Haiti and the circumstances he or she would likely face if compelled to return to a nation in the midst of dire humanitarian and governance crises.

We support and encourage the Administration to use the several tools available to address the critical conditions for the Haitians who have sought refuge under the bridge in Del Rio. In immigration matters, the Supreme Court has repeatedly affirmed "the deference traditionally accorded the President in this sphere."³ For example, the President may set a number of refugees to be admitted to the United States separate from the annual cap after determining that "an unforeseen emergency refugee situation exists," and that admission of those refugees "is justified by grave humanitarian concerns."⁴ The administration also could invoke country-specific measures to allow these migrants to legally remain in the United States while conditions in their country of origin are too hazardous for them to safely return.⁵ On an individual level, the Attorney General may parole a migrant into the United States if he "determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States."⁶

We also respectfully urge your administration to reconsider relying on 42 U.S.C. § 265 and related rules to justify expelling Haitian nationals to Haiti. As one federal court recently held, citing Title 42 to expel foreign nationals already in the United States on public health grounds defies the language of the statute and overrides clear humanitarian protections for refugees in the law.⁷

² See Mica Rosenberg & Lisa Lambert, *Biden Administration Seeks to Lift U.S. Refugee Cap to 125,000*, REUTERS (Sept. 20, 2021), <https://reut.rs/3EHHWmG>.

³ *Trump v. Hawaii*, 138 S. Ct. 2392, 2409 (2018).

⁴ 8 U.S.C. § 1157(b).

⁵ See, e.g., 86 FR 41863, *Designation of Haiti for Temporary Protected Status* (Aug. 3, 2021); 86 FR 9531, *Reinstatement of Deferred Enforced Departure and Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians* (Feb. 16, 2021).

⁶ 8 U.S.C. § 1182(d)(5)(B).

⁷ See *Huisha-Huisha v. Mayorkas*, Civ. Action No. 21-100, 2021 WL 4206668 (D.D.C. Sept. 16, 2021).

As Attorneys General, we understand the need to respond to an evolving crisis while following the law. We urge the administration to exercise its discretion—discretion that the law expressly provides—to demonstrate compassion and fairness in the treatment of those Haitians seeking refuge in our country.

Respectfully,



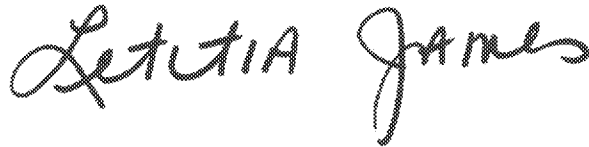
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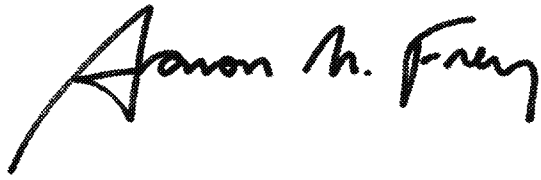
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WILLIAM TONG
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TOM MILLER
Iowa Attorney General



AARON M. FREY
Maine Attorney General



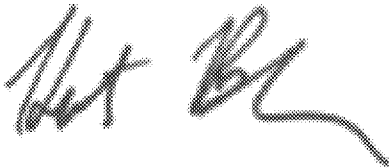
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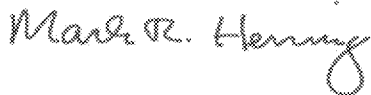
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**CALL WITH SENATE HSGAC CHAIRMAN GARY PETERS (D-MI)
ON OPERATIONS IN DEL RIO, TEXAS**

September 28, 2021

2:40 – 3:00pm

Conference Call

Overview:

- Senator Gary Peters, Chairman of the Homeland Security and Governmental Affairs Committee (HSGAC), requested a call with the Commissioner to discuss CBP's response to the surge of Haitian migrants in Del Rio, Texas.
- The Chairman will focus on the U.S. Border Patrol's treatment of these migrants, and the concerns raised following media coverage of Horse Patrol operations in Del Rio.
- Chairman Peters will be joined by members of his HSGAC staff.
- You will be staffed by USBP Chief (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) from OCA.

Discussion Points:

- Current Situation in Del Rio: *Need Updates from BP.*
- Troubling images/footage: Shocked by the images from Del Rio of Horse Patrol Units that have dominated the media in recent days. What those images appear to portray is terrible and is not who we are.
- Commitment to humane treatment of migrants: Any abuse is unacceptable, and we hold ourselves to the highest standards. We are committed to processing migrants in a safe, orderly, and humane way.
- OPR Investigation: Commissioner immediately asked for an independent OPR investigation. This process will move as quickly as possible, and as the facts are established, we will take the appropriate action. The DHS Office of Inspector General is also engaged, and will review OPR's findings.
- Transparency: Transparency and accountability are vital principles of CBP, and we will provide Congressional stakeholders updates as this investigative process moves forward. The Secretary has committed to making the results public.
- Evaluation of Horse Patrol training: The Border Patrol and Office of Training & Development has begun an internal review of the Horse Patrol's training practices.
- Support for the workforce: The CBP workforce has risen to the challenge under extraordinary circumstances, leading a whole-of-government response in the shortest possible timeline, to ensure a safer environment for the migrants, our agents, and the surrounding community.
 - We need to continue to work with Congress and the Chairman to get the CBP workforce the resources, personnel, and supplies needed to support this mission.

Watch Out For/ If Asked:

- Investigation timelines: Staff have requested specific timelines for the conclusion of the OPR investigation, as well as any disciplinary action that may result.
- USBP Horse Patrol stand down: Staff have also inquired as to the scope and status of the stand down of Horse Patrol operations, as various media narratives have inaccurately characterized the operational pause.

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- POTUS Comments: In a press conference on Friday, Sept. 24, President Biden responded to a question about the Del Rio situation: “Of course I take responsibility. I’m President. But it was horrible what—to see, as you saw—to see people treated like they did: horses nearly running them over and people being strapped. It’s outrageous. I promise you, those people will pay. They will be — an investigation is underway now, and there will be consequences. There will be consequences. It’s an embarrassment. But beyond an embarrassment, it’s dangerous; it’s wrong. It sends the wrong message around the world. It sends the wrong message at home. It’s simply not who we are. Thank you.”

Background:

- DHS organized a briefing on the situation in Del Rio for key Congressional staff, including HSGAC staff, on Tuesday, Sept. 21. USBP Chief (b) (6), (b) (7)(C) was the lead CBP briefer in that discussion.
- Chairman Peters has not made many public statements about the situation in Del Rio, but did ask the following question of Secretary Mayorkas in the Sept. 21 HSGAC hearing: “Secretary Mayorkas, I’d like to ask you about some very concerning images that were released yesterday that appear to show Border Patrol agents whipping Haitian migrants. These acts certainly are intolerable, and a complete diversion from your agency’s mission. And my question to you is, can you explain to the committee what you’ll be doing to address what American saw in the -- when looking at those images?”
 - Sec. Mayorkas: “I’m very pleased you asked that question. It has been uppermost in my mind since I first saw the images late yesterday, Mr. Chairman. We commenced an investigation, at my direction, immediately. The Office of Professional Responsibility within the Department of Homeland Security’s U.S. Customs and Border Protection, number one. Number two, we alerted the Inspector General of the incidents. Number three, I directed that the Office of Professional Responsibility be present on site in Del Rio, 24/7, to ensure that the conduct of our personnel adheres to our policies, to our training, and to our values. I was horrified to see the images, and we look forward to learning the facts that are adduced from the investigation, and we will take actions that those facts compel. We do not tolerate any mistreatment or abuse of a migrant, period. I also want to say and I think it’s very important to say that I saw two other powerful things yesterday when I was there under the bridge in Del Rio. Number one, I saw the (inaudible) vulnerability of the Haitian population, the predominantly Haitian population. And I cannot overstate how difficult that is to see. We are speaking about vulnerable individuals in tragic circumstances. I also saw the extraordinary work of U.S. Customs and Border Protection, not only the United States Border Patrol, but its Office of Field Operations, as well as other agencies within the Department of Homeland Security that have been surged to Del Rio to address the situation in partnership with state and local law enforcement personnel. As well as the forces in civil society. We saw the American Red Cross, we saw World Central Kitchen providing food and supplies to these individuals. It’s an all of government and all of local society effort there and I want to say that the action that we saw, the images that we saw do not speak of the incredible men and women of U.S. Customs and Border Protection or the Department of Homeland Security as an institution.

PRESS: Closed

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CBP/OPA Services Required: None.

ATTACHMENTS:

- Draft Secretary Response to House Homeland Security Committee on Del Rio Response.
- Bio, Senator Gary Peters (D-MI)

PARTICIPANTS:

CBP

Commissioner

Chief (b) (6), (b) (7)(C) Law Enforcement Operations Directorate, USBP

(b) (6), (b) (7)(C) Acting Deputy Assistant Commissioner, OCA

Non-CBP

Senator Gary Peters (D-MI), Chairman, Homeland Security and Governmental Affairs Committee

HSGAC committee staff (1-3 likely, TBD)

Staff Responsible for Briefing Memo:

(b) (6), (b) (7)(C) OCA, (b) (6), (b) (7)(C)

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