

United States Senate

WASHINGTON, DC 20510

September 13, 2019

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Charles E. Schumer
Minority Leader
U.S. Senate
Washington, DC 20510

The Honorable Richard Shelby
Chairman
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable Shelley Moore Capito
Chairman
Committee on Appropriations
Subcommittee on Homeland Security
U.S. Senate
Washington, DC 20510

The Honorable Jon Tester
Ranking Member
Committee on Appropriations
Subcommittee on Homeland Security
U.S. Senate
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Chairman Shelby, Vice Chairman Leahy, Chairman Capito and Ranking Member Tester:

We write today to express concerns regarding likely efforts by the Trump Administration to circumvent congressional intent in funding decisions for the Department of Homeland Security (DHS) in Fiscal Year 2020. DHS has seen significant budget increases under the Trump Administration and has achieved much of this growth in contravention of the expressed intent of Congress. This manipulation of the appropriations process undercuts our democratic system of checks and balances, bypassing Congress' constitutional authority to appropriate funds, and has fueled the implementation of cruel policies harming immigrant communities on the border and throughout the United States.

In recent years, we have seen the Trump Administration take advantage of Continuing Resolutions (CR) to spend significantly more than the amounts appropriated for detention and enforcement at U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). We appreciate that the Senate has remained focused on achieving regular order in Appropriations and strongly support that goal for Fiscal Year 2020. The Committee's leadership and oversight is essential to ensure that taxpayer dollars are spent and managed in accordance with congressional priorities.

In order to ensure that funds are spent in a manner consistent with the Constitution, we urge you to include proper accountability mechanisms to ensure that the Administration adheres to the amounts of appropriations set by the Congress and does not act unilaterally to increase funds for ICE and CBP.

CRs are intended to require flat funding unless Congress specifically authorizes a change. Toward that end, ICE and CBP must be held to their appropriated budgets for detention and enforcement as set forth in the FY19 bill. Specifically, we urge that the following two issues be prioritized during negotiations

on a Continuing Resolution or any other appropriations for DHS: First, to ensure accountability, we must reject any anomaly, or lump sum provided to the agency at the outset of the CR, that would increase the DHS budget for additional ICE or CBP agents, detention beds or facilities, or wall construction beyond that approved by Congress in FY19. Second, the CR must include explicit language limiting ICE's spending in the Enforcement and Removal Operations account to the amount equivalent to a normal appropriation for the period of the CR per the FY19 bill. This necessary language would preclude the use of an exception apportionment, a device at ICE's disposal which could be used to borrow forward on its detention funding, growing its detention system at a time when it should be holding steady or contracting in accordance with congressional intent. We should always demand that agencies provide justification for their appropriations requests and ensure that Congress exerts its authority under the Constitution to evaluate the merits of those proposals and write the law.

As many Members of Congress have observed and watchdog agencies have reported on, this Administration fails to treat migrants in detention humanely and turns a blind eye to horrific detention conditions. Any CR must include strong guardrails on the treatment of individuals in CBP custody, specifically including a clear limit on CBP's use of detention to a 72-hour period.

The Administration's disregard for congressional intent should trouble all of us. Just this year, the President signed into law the FY19 DHS appropriations bill, which directed ICE to drop its daily population from 49,060 to 40,520 by the end of the fiscal year.¹ Over the course of the past year, the Trump Administration has thumbed its nose at Congress, ramping up its use of long-term detention to reach the historically unprecedented number of 55,220 people jailed daily in mid-August—just six weeks before its deadline to ramp down to 40,520.² Funds that Congress appropriated to DHS for other purposes have been redirected toward policies that systematically harm migrants, including the endemic abuse of solitary confinement in ICE custody,³ the continued separation of families,⁴ and the return of tens of thousands of asylum seekers to face homelessness and danger in Mexico.⁵ Indeed, just weeks before the end of the fiscal year and on the eve of Hurricane Dorian, DHS announced plans to divert \$271 million in funds from FEMA and the U.S. Coast Guard, among other critical agencies, to pay for

¹ These appropriated levels are described on page 2 of the Division-by-Division Summary of the bill released by the House Appropriations Committee, online here: <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Summary%20of%20Conference%20Report.pdf>.

² Current detention population is maintained by ICE on its website at: <https://www.ice.gov/detention-management#tab2>. On August 17, 2019, ICE reported the currently detained population was 55,220.

³ Spencer Woodman, Maryam Saleh, Hannah Rapple, Karrie Kehoe, NBC News, "Thousands of Immigrants Suffer in Solitary Confinement in U.S. Detention Centers," May 21, 2019, <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>; Project on Government Oversight, "Isolated: ICE Confines Some Detainees With Mental Illness in Solitary for Months," Aug. 14, 2019, <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>.

⁴ Lomi Kriel and Dug Begley, Houston Chronicle, "Trump administration still separating hundreds of migrant children at the border through often questionable claims of danger," June 22, 2019, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-administration-still-separating-hundreds-of-14029494.php>.

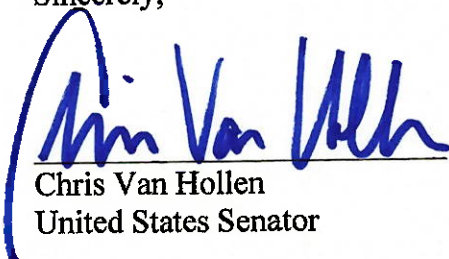
⁵ Merchant, AP, "US to send asylum seekers back to dangerous part of Mexico," July 19, 2019, <https://www.apnews.com/8607c5ef6360498f8875a3c7d5281401Nomann>

even more ICE enforcement and detention and to support the Administration's dangerous new policy of forcing asylum seekers to wait in Mexico.⁶

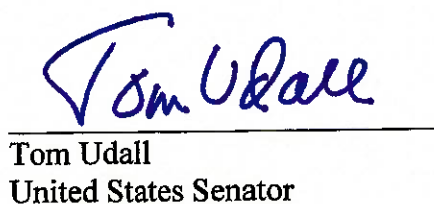
Just a few months ago, Congress passed a supplemental appropriations bill to provide additional funding to address an influx of immigrants seeking asylum at the border, including children. While we did not agree with every provision in that bill, it followed the appropriate process – a request, evaluation of need, and bipartisan negotiation. Should the Department of Homeland Security have additional needs, it should submit them to Congress as a supplement to their budget request rather than circumventing Congressional intent through transfers, reprogramming, and other exceptions.

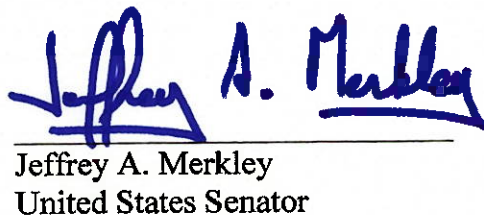
By the power of the purse entrusted to us by the Constitution we are responsible for appropriating funds to meet national needs and priorities. We must not allow this president, or any future Executive, to flout the will of Congress.

Sincerely,

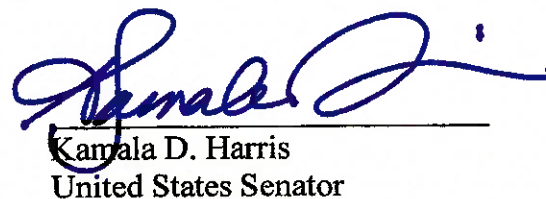

Chris Van Hollen
United States Senator

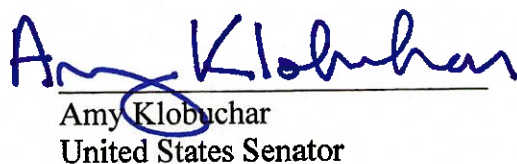

Richard J. Durbin
United States Senator

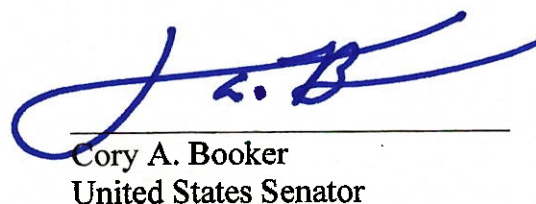

Tom Udall
United States Senator

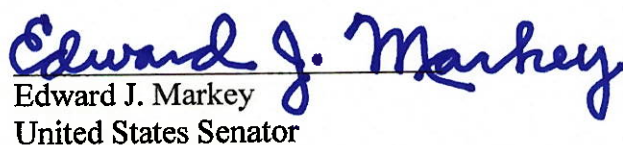

Jeffrey A. Merkley
United States Senator

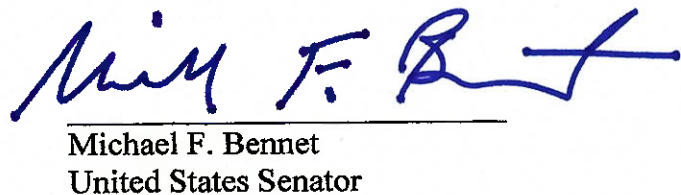

Tammy Baldwin
United States Senator


Kamala D. Harris
United States Senator


Amy Klobuchar
United States Senator


Cory A. Booker
United States Senator


Edward J. Markey
United States Senator


Michael F. Bennet
United States Senator

⁶ Misra, Tanvi, CQ Roll Call, "Trump wants to reprogram DHS money for ICE detention operations," Aug. 27, 2019, <https://www.rollcall.com/news/whitehouse/trump-wants-reprogram-dhs-money-ice-detention-operations>



Richard Blumenthal
United States Senator



Ron Wyden
United States Senator



Kirsten Gillibrand
United States Senator



Tammy Duckworth
United States Senator



Bernard Sanders
United States Senator



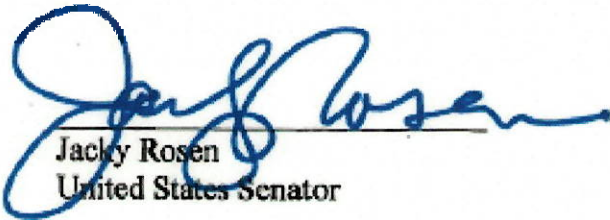
Elizabeth Warren
United States Senator



Mazie K. Hirono
United States Senator



Sherrod Brown
United States Senator



Jacky Rosen
United States Senator



Martin Heinrich
United States Senator