



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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Chairman

Sam Graves
Ranking Member

Katherine W. Dedrick, Staff Director

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July 27, 2022

The Honorable Deanne Criswell
Administrator
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20024

Dear Administrator Criswell:

On June 30, 2022, the Supreme Court issued a decision in *Biden v. Texas* that cleared the way for the Biden Administration to end the Migrant Protection Protocols (MPP).¹ In the wake of this decision, the Department of Homeland Security (DHS) has indicated it “is continuing its efforts to terminate [MPP] as soon as legally permissible.”² This development comes as the Administration continues to pursue an end to Title 42. Given this decision and the posture of the Administration’s border policy, it is imperative that we better understand the Federal Emergency Management Agency’s (FEMA’s) role at the border.

This year has seen a significant increase in encounters on the southern border—even with Title 42 encounters excluded.³ So far in this fiscal year (FY) the United States Customs and Border Patrol (CBP) has identified over 898,000 southwest land border encounters when encounters under Title 42 are excluded.⁴ By contrast, at the same point in FY 2019 and prior to Title 42 coming into effect, CBP only encountered about 780,000.⁵ This increase is alarming, and I am concerned that the weakening of border policies will give rise to an even more prolific surge in the latter half of FY 2022.

I am also concerned that FEMA—the Federal government’s lead emergency management agency⁶—is being tasked to support functions outside its core mission while the Nation is also

¹ *Biden v. Texas*, 597 U.S. ____ (2022).

² *Court Ordered Reimplementation of the Migrant Protection Protocols*, DHS, July 7, 2022, available at <https://www.dhs.gov/migrant-protection-protocols>.

³ *Southwest Land Border Encounters*, CBP available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁴ *Id.*

⁵ *Id.*

⁶ 6 U.S.C. § 313.

dealing with a record number of disasters.⁷ Concerned about resources, FEMA has requested the Committee support the recruitment and retention of FEMA personnel. Specifically, the *Homeland Security Act* prohibits the diversion of FEMA assets, functions, or mission for the continuing use of any other DHS organization unless such assignments do not reduce the capability of FEMA to perform its missions.⁸ Yet, in response to a letter I previously sent to the Secretary of Homeland Security in April of 2021, the Secretary indicated that he “directed” FEMA to support other agencies statutorily charged with border operations.⁹

As you know, one of the programs FEMA is responsible for is the Emergency Food and Shelter Program (EFSP). EFSP awards grants to individuals and families experiencing hunger and homelessness.¹⁰ EFSP was authorized by the *McKinney-Vento Homeless Assistance Act of 1987* to supplement and expand “ongoing work of local nonprofit and governmental social service organizations to provide shelter, food, and supportive services to individuals and families who are experiencing, or at risk of experiencing, hunger and/or homelessness.”¹¹ In April 2022, FEMA amended its description of this program on its website to include supplementing relief efforts for the “purposes of providing shelter and supportive services to families and individuals encountered by the Department of Homeland Security (DHS).”¹²

In 2021, there were 326,000 *sheltered* homeless in the United States.¹³ This number does not account for unsheltered people and families experiencing hunger and homelessness.¹⁴ I am concerned that a program established to help people experiencing hunger and homelessness is being used instead to support the border crisis, and I am concerned how that diversion is impacting the ability of EFSP partners to address homelessness. There have been recent reports of some of these shelters and nonprofits being overwhelmed with migrants, raising the question of how this new mandate impacts our investments in addressing homelessness at home.¹⁵

The *American Rescue Plan Act (ARPA)* and the *Supplemental Appropriations for Humanitarian Assistance (SAHA)* appropriated over \$114 million in supplemental funding to

⁷ See Doyle Rice, *2021 was a deadly year for weather: 20 disasters killed more than 600 Americans*, USA TODAY, Jan. 10, 2022, available at <https://www.usatoday.com/story/news/nation/2022/01/10/weather-2021-death-toll/9157670002/>.

⁸ *Id.*

⁹ Letter from Alejandro N. Mayorkas, Secretary, DHS to the Honorable Sam Graves, Ranking Member, Committee on Transportation and Infrastructure, U.S. House of Representatives, August 20, 2021 (on file with Committee).

¹⁰ 42 U.S.C. § 11331; Elizabeth M. Webster, CON. RSCH. SERV., IF12026, FEMA’s EFSP, available at <https://crsreports.congress.gov/product/pdf/IF/IF12026>.

¹¹ EFSP, FEMA, April 5, 2022, available at <https://www.fema.gov/grants/emergency-food-and-shelter-program>.

¹² *Id.*

¹³ THE 2021 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (2022), available at <https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf>.

¹⁴ *Id.*

¹⁵ See Vanessa G. Sánchez, *D.C. aid groups overwhelmed as migrants arrive from Texas, Arizona*, WASH. POST, July 13, 2022, available at <https://www.washingtonpost.com/dc-md-va/2022/07/13/dc-migrants-buses-texas-union-station/>.

EFSP.¹⁶ *SAHA* includes a \$30 million set aside for EFSP to provide humanitarian aid at the southern border.

In addition to having a seat on the National Board that governs EFSP, FEMA maintains a definitive presence in the management and direction of this program.¹⁷ By statute, FEMA must provide the National Board with administrative support.¹⁸ This support includes the services of FEMA's legal counsel, clerical personnel, and the provision of auditing services.¹⁹ In a DHS fact sheet from March of this year, DHS noted the \$150 million appropriation to EFSP for FY 2022 under the heading "utilize appropriated resources to improve border processing."²⁰ The inclusion of EFSP in DHS's broad strategy indicates that, contrary to FEMA's statutory mission, DHS views FEMA as a component of its response to the migrant crisis.

I am concerned that the Administration's policies are creating the impression that entering the United States illegally is a risk worth taking. Lax border policies encourage migrant crossings that have a drastic humanitarian cost. FEMA will likely be one of the agencies to bear the brunt of that cost, impacting FEMA's limited resources and core missions.

It is imperative that this Committee understand the role of FEMA at the border and generally within the space of immigration. Given this, we respectfully ask FEMA to provide a copy of EFSP's latest annual report to Congress and written responses and relevant documents to the below questions no later than Wednesday, August 10, 2022:

1. *ARPA* appropriated \$110 million to EFSP that will remain available until 2025 for the purposes of humanitarian relief to individuals encountered by the Department of Homeland Security.²¹ What types of activities has EFSP funded with this appropriation? Please provide a written response that contains both general categories of activities and several examples of activities within each category that have been funded.
2. Provide a breakdown of activities and funding that has been spent on humanitarian relief for individuals encountered by DHS versus activities and funding spent for traditional EFSP activities unrelated to such encounters from 2020 to the present.
3. Provide a breakdown of the number of individuals and families assisted through EFSP by an encounter with DHS versus those assisted through traditional EFSP activities unrelated to such encounters with DHS.

¹⁶ *ARPA*, Pub. L. 117-2, 135 Stat. 4; *SAHA*, Pub. L. 116-26, 133 Stat. 1018; see also *Update Notice Supplemental Appropriations for Humanitarian Assistance*, UNITED WAY, Aug. 1, 2019, available at <https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Update%20Notice%20-%20Supplemental%20Appropriations%20for%20Humanitarian%20Assistance.pdf#:~:text=The%20Supplemental%20Appropriations%20Humanitarian%20Assistance%20grant%20provides%20funding,migrants%20wh%20have%20been%20released%20from%20DHS%20custody>.

¹⁷ 42 U.S.C. § 11333.

¹⁸ *Id.*

¹⁹ 42 U.S.C. § 11331.

²⁰ *FACT SHEET: DHS Preparations for a Potential Increase in Migration*, DHS, Mar. 30, 2022, available at <https://www.dhs.gov/news/2022/03/30/fact-sheet-dhs-preparations-potential-increase-migration>.

²¹ *ARPA*, Pub. L. 117-2, 135 Stat. 4.

4. Have EFSP funds been used to relocate migrants encountered by DHS throughout the United States? Have these funds been used for interstate transportation of migrants?
5. Statutorily, FEMA must provide several types of administrative support to administer this program. Please provide written answers to the following:
 - a. How many FEMA employees are responsible for providing the required support to EFSP? Please provide a breakdown of employees by job function.
 - b. Does FEMA have employees that work exclusively on EFSP? If so, how many and what is their job function? Has this number increased to support humanitarian relief related to border encounters?
 - c. Are there FEMA employees who provide support to this program in addition to their other job functions at FEMA? How much of their time do these employees spend working on this program? Please provide a breakdown of how much time these employees spend on their primary FEMA responsibilities against the amount of time they spend on this program.
 - d. Administrative expenses for the program are capped at five percent of the amount appropriated to EFSP.²² What percent of the appropriation for administration has FEMA spent? Please provide the Committee an accounting statement and fund allocation documentation; specifically, please include a breakdown of the Administrative expenses budget.
6. EFSP's statute requires that FEMA provide the National Board with support, including legal support.²³
 - a. What is the nature of the legal support FEMA provides to the National Board?
 - b. Does FEMA ensure that funds disbursed are used in compliance with all applicable state and local laws concerning immigration?
 - c. Please provide any memoranda of understanding (MOUs) or internal agency guidance about the provided legal guidance.
7. Please provide the Committee with all records referencing, referring to, discussing, or citing FEMA's involvement in EFSP grants and with grantees.
8. Specifically, please provide written responses to whether FEMA is involved in assisting grantees after funds are disbursed. If so, what are the specifics of FEMA's involvement? Does FEMA provide technical assistance to grantees?
9. What entity is ultimately responsible for disbursing grant funds for EFSP? Where are the funds for the program held before they are disbursed?
10. In addition to EFSP, in what other ways is FEMA involved in the migrant crisis? Please provide a list of all applicable programs and all summary reports of planned or potential activities that FEMA is assisting with in terms of the migrant crisis.

²² 42 U.S.C. § 11344.

²³ 42 U.S.C. § 11331.

11. Has DHS consulted FEMA about the migrant crisis? In what way? What assistance has FEMA provided to DHS?
 - a. Please provide the Committee with copies of all records referencing, referring to, discussing, or citing FEMA's involvement regarding the above question.

12. On March 13, 2021, Secretary Mayorkas directed FEMA to support the government-wide effort to shelter and transfer unaccompanied minors at the southwest border.²⁴ Has the agency tracked where the minors are now? How many FEMA personnel were pulled from their daily tasks to respond to the border crisis? Did FEMA's role in natural disaster response decline due to this expanding role at the border?

Thank you for your attention to this matter. We look forward to your response. If you have any questions, please contact Johanna Hardy, Republican Staff Director, Subcommittee on Economic Development, Public Buildings, and Emergency Management at (202) 225-9446.

Sincerely,



Sam Graves
Ranking Member

²⁴ Press Release, FEMA, Homeland Security Secretary Mayorkas Directs FEMA to Support Response for Unaccompanied Children (Mar. 13, 2021), *available at* <https://www.dhs.gov/news/2021/03/13/homeland-security-secretary-mayorkas-directs-fema-support-response-unaccompanied>.