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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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LILA HARPER HELMS, MAJORITY STAFF DIRECTOR
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March 6, 2024

Mr. Rick Cotton
Executive Director
Port Authority of New York and New Jersey
4 World Trade Center
New York, NY 10007

Dear Mr. Cotton:

As members of the U.S. Senate Committee on Commerce, Science, and Transportation (“Committee”), we write regarding the housing of illegal aliens¹ at John F. Kennedy International Airport (“JFK”). Since at least June of 2023, the Port Authority of New York and New Jersey (“Port Authority”)—the owner and operator of JFK—has housed thousands of illegal aliens at JFK Building 197.² This and other “respite centers” are ostensibly intended to be only short-term shelters while more permanent arrangements are made. In fact, Building 197 is designated for aeronautical purposes,³ and the Federal Aviation Administration (FAA) stated that “the use of airport property (Building 197) for the proposed emergency shelter must be on a limited, short-term basis.”⁴ Despite the Port Authority’s and FAA’s statements to the contrary, recent reporting suggests that illegal aliens have been living in Building 197, and other areas, for anything but a “limited, short-term basis.”⁵

Over the last 75-plus years, the federal government has invested hundreds of billions of dollars in the development of a robust, nationwide public-use airport system to facilitate the “growth of aviation and the requirements of interstate commerce . . . and the national defense.”⁶ In FY2022,

¹ As used in this letter, the term “illegal alien” means an alien, as defined in § 101 of the Immigration and Nationality Act (INA), who has not been admitted as that term is defined in such section.

² *Preparations underway to turn part of JFK Airport into temporary shelter for migrants*. ABC7NY. June 2, 2023. Available at <https://abc7ny.com/nyc-migrant-jfk-hangar/13333438/>.

³ *Ibid.*

⁴ *FAA Approval to Extend the License Agreement for the Temporary Use of Building Number 197 at John F. Kennedy International Airport*. Federal Aviation Administration. September 25, 2023.

⁵ Thomas Tracy. *Migrant at JFK Airport shelter busted for running into secure area*. New York Daily News. February 11, 2024. Available at <https://www.nydailynews.com/2024/02/11/migrant-at-jfk-airport-shelter-busted-for-running-into-secure-area-sources/>.

⁶ Airport and Airway Improvement Act of 1982 (PL 97-248).

JFK was awarded nearly \$11 million in Airport Improvement Program grants.⁷ As the FAA states, there are several obligations that come with receiving this federal assistance, but the “[m]ost important is that the airport and its facilities must be available for public use as an airport.”⁸ Repurposing airport facilities and infrastructure to house illegal aliens not only degrades taxpayers’ investment in the national airport system but, at least in the case of JFK, as federally-funded airport facilities are withdrawn from access and commercial use, it violates the requirement that they “be available for public use *as an airport*.”⁹ No rational person would define an airport as a facility that houses illegal aliens.

Since 1981, New York City (NYC) has been a “right to shelter” city, which entitles anyone who ask for city-provided “shelter and board” to receive it.¹⁰ In 1989, then-Mayor Ed Koch designated NYC as a “sanctuary city”—meaning the city disregards federal immigration law and refuses to cooperate with federal immigration authorities.¹¹ Former NYC Mayor Bill DeBlasio doubled down on this lawless position, signing two measures into law in 2014 to “dramatically reduce” cooperation with federal immigration authorities and, in 2018, issuing citywide guidance and new NYPD protocols to “institutionalize . . . that [the city] will not voluntarily cooperate with federal immigration enforcement activities.”¹² The State of New York meanwhile, as part of a wave of pro-illegal immigration hysteria during the Trump administration, declared itself a “sanctuary state” in 2017 via an executive order from then-Governor Andrew Cuomo.¹³ Current NYC Mayor Eric Adams claims the city’s sanctuary city status “has nothing to do” with NYC’s illegal alien crisis, and New York Governor Kathy Hochul has stated “sanctuary status . . . is not the driver of why [illegal aliens are] coming to New York State.”¹⁴ But clearly it is: the state’s

⁷ *2023 Airport Improvement Program (AIP) Grants*. Federal Aviation Administration. Available at https://www.faa.gov/airports/aip/2023_aip_grants.

⁸ *AC 150/5190-8, Minimum Standards for Commercial Aeronautical Activities*. Federal Aviation Administration. December 7, 2023. Available at https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC-150-5190-8-minimum-standards.pdf.

⁹ *Id.* (emphasis added).

¹⁰ Anthony Izaguirre. *New York City moves to suspend ‘right to shelter’ as migrant influx continues*. Associated Press. October 4, 2023. Available at <https://apnews.com/article/new-york-city-immigration-shelter-eric-adams-480120d5d46d4b85a3c353c628a7d018>; “*The Callahan Consent Decree*.” Coalition for the Homeless. 1981. Available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/08/CallahanConsentDecree.pdf>.

¹¹ Executive Order No. 124 City Policy Concerning Aliens. New York City Mayor Ed Koch. August 7, 1989. Available at https://www.nyc.gov/html/records/pdf/executive_orders/1989EO124.PDF.

¹² *Mayor Bill de Blasio Signs into Law Bills to Dramatically Reduce New York City’s Cooperation with U.S. Immigration and Customs Enforcement Deportations*. Office of the Mayor. November 14, 2014. Available at <https://www.nyc.gov/office-of-the-mayor/news/520-14/mayor-bill-de-blasio-signs-law-bills-dramatically-reduce-new-york-city-s-cooperation-with#0>; *De Blasio Administration Announces Citywide Guidance and NYPD Protocol to Codify Restrictions on Assistance with Federal Immigration Enforcement*. Office of the Mayor. January 31, 2018. Available at <https://www.nyc.gov/office-of-the-mayor/news/075-18/de-blasio-administration-citywide-guidance-nypd-protocol-codify-restrictions-on>.

¹³ *Do you live in one of the 11 sanctuary states or the District of Columbia?* Federation for American Immigration Reform. Available at <https://www.fairus.org/issue/sanctuary-policies/do-you-live-1-11-sanctuary-states>.

¹⁴ Tom Eschen. *Gov. Hochul: ‘Right to shelter’, not Sanctuary status, facilitating migrant influx*. CBS6 News. September 8, 2023. Available at <https://cbs6albany.com/news/local/gov-hochul-right-to-shelter-not-sanctuary-status-facilitating-migrant-influx>.

sanctuary status and the city's sanctuary city and right to shelter status are magnets for illegal aliens, drawing these individuals to New York State and NYC and creating what Governor Hochul has declared a "state of emergency."¹⁵

For years, the Governor and Mayor have promoted the State's and NYC's sanctuary status, as well as the generous, taxpayer-funded benefits for illegal aliens, like free housing. In December 2021, for example, Governor Hochul stated ". . . despite where they came from . . . or the circumstances that drove them to this country and to this state, we say 'you are welcome here. You are welcome with open arms . . . We'll not only house you, but we'll protect you.'"¹⁶ Similarly, in June 2021 then-mayoral candidate Adams said "We need to ensure that [illegal aliens] receive healthcare and protection . . . that ICE is never in a position to partner with the police department and harm them."¹⁷ Later that year, Adams went on to say "We should protect our immigrants. Period. Yes, New York City will remain a sanctuary city under an Adams administration."¹⁸

But Governor Hochul's and Mayor Adams's "open-armed" welcome to illegal aliens "wherever they came from" apparently has its limits. With tens of thousands of illegal aliens now taking them up on their offer, both Governor Hochul and Mayor Adams have changed their positions and are now asking illegal aliens to "go somewhere else" and "consider another city . . . in the U.S." instead of coming to New York.¹⁹ Mayor Adams even said the sending of illegal aliens to NYC was creating "chaos,"²⁰ characterized Texas Governor Greg Abbott as a "madman"²¹ with

¹⁵ Luke Parsnow. *Hochul once again extends state of emergency over migrant situation*. Spectrum News. October 23, 2023. Available at <https://spectrumlocalnews.com/nys/central-ny/politics/2023/10/23/hochul-once-again-extends-state-of-emergency-over-migrant-situation>.

¹⁶ *New York governor goes from welcoming migrants to telling them to go elsewhere*. Dan Abrams Live. NewsNation. September 21, 2023. Available at <https://www.youtube.com/watch?v=nqjBpfjS8E8>.

¹⁷ Eric Adams. "We are ALL New Yorkers, and we all deserve an equal opportunity to raise safe, healthy, and economically secure families. As Mayor, I'll always defend our undocumented communities and fight to ensure that they have the support and protection needed to thrive in our City." June 3, 2021. Available at <https://x.com/ericadamsfornyc/status/1400511236622663688>.

¹⁸ Eric Adams. "'We should protect our immigrants.' Period. Yes, New York City will remain a sanctuary city under an Adams administration. #EricOnNBC." October 20, 2021. Available at <https://twitter.com/ericadamsfornyc/status/1450967702093320203>.

¹⁹ Danielle Wallace. *Gov. Kathy Hochul has message for migrants looking to come to New York: 'Go somewhere else.'* Fox News. September 21, 2023. Available at <https://www.foxnews.com/politics/gov-kathy-hochul-message-migrants-looking-come-new-york-go-somewhere-else>; Adam Shaw. *NYC issues posters telling migrants to 'consider another city,' warns of sky-high prices*. July 19, 2023. Available at <https://www.foxnews.com/politics/nyc-issues-posters-telling-migrants-consider-another-city-warns-sky-high-prices>.

²⁰ Sahalie Donaldson. *Adams threatens 'all viable' legal actions against Abbott over migrants*. City&State. January 2, 2024. Available at <https://www.cityandstateny.com/policy/2024/01/adams-threatens-all-viable-legal-actions-against-abbott-over-migrants/393056/>.

²¹ Charles Cooke. *On Illegal Immigration, Mayor Eric Adams Is an Incoherent Mess*. National Review. September 7, 2023. Available at <https://www.nationalreview.com/corner/on-illegal-immigration-mayor-eric-adams-is-an-incoherent-mess/>.

“a diabolical plan”²² for providing transportation for illegal aliens to NYC from Texas at those aliens’ request. He went on to suggest Governor Abbott is motivated by racial animus and that his voluntary program to transport illegal aliens to sanctuary cities is really “targeting five cities run by Black mayors . . . using this crisis to hurt Black-run cities.”²³ Moreover, Adams is now demanding the American taxpayer cough up billions of dollars to pay for New York’s decision to make itself a haven for illegal aliens.²⁴

In truth, New Yorkers are being “hurt” by the Governor’s and Mayor’s pro-illegal alien policies. Just this month, Police Commissioner Edward Caban stated that “a wave of migrant crime has washed over our city.”²⁵ This crime wave is the unfortunate but predictable result of the New York legal system, which releases criminal illegal aliens back into the community rather than cooperating with Immigration and Customs Enforcement (ICE), and forces ICE officials to track them back down, detain, and remove them.

In just the last two fiscal years ICE lodged 266 detainer requests for criminal illegal aliens in NYC, all of which were ignored.²⁶ The Biden administration’s own ICE describes these detainees as “critical public safety tool[s]” that “increase the safety of all parties involved.”²⁷ The detainees included violent criminals like an El Salvadorian illegal alien, previously convicted as an aggravated felon for stalking-emotional distress, invasion of privacy-sex gratification, and burglary in the second degree, who was subsequently arraigned for rape in the first degree by

²² Kelly Mena. *Mayor Adams blames Gov. Abbott for chaotic New Jersey migrant situation*. Spectrum News. January 2, 2024. Available at <https://ny1.com/nyc/all-boroughs/politics/2024/01/02/mayor-adams-blames-gov--abbott-for-chaotic-new-jersey-migrant-situation>.

²³ Eric Adams. “This weekend, we learned that Governor Abbott is once again deciding to play politics with people’s lives by resuming the busing of asylum seekers to New York, Los Angeles, Chicago, Denver, and Washington, D.C. Not only is this behavior morally bankrupt and devoid of any concern for the well-being of asylum seekers, but it is also impossible to ignore the fact that Abbott is now targeting five cities run by Black mayors. Put plainly, Abbott is using this crisis to hurt Black-run cities. Last year, Abbott bussed migrants to New York against their will, reportedly had security guards hold them hostage on busses when they tried to get off in other cities, shipped them off while sick and COVID positive, and tagged individuals with barcodes. Despite Abbott’s inhumane actions, New York City will continue to do all it can to handle this influx, but this crisis is more than one city can handle. With a vacuum of leadership from border states, we need the federal government to step in and provide us with support and to prevent this cruelty from continuing.” May 1, 2023. Available at <https://x.com/NYCMayor/status/1653094283220598784>.

²⁴ Misty Severi. *NYC Mayor Eric Adams blames Biden for city’s budget woes: ‘Yell at DC’*. Washington Examiner. November 21, 2023. Available at <https://www.washingtonexaminer.com/news/2448284/nyc-mayor-eric-adams-blames-biden-for-citys-budget-woes-yell-at-dc/>.

²⁵ Jake Offenhartz. *Brawl between migrants and police in New York’s Times Square touches off backlash*. Associated Press. February 5, 2024. Available at <https://apnews.com/article/times-square-migrant-brawl-police-new-york-3504c2e1f4b6de73512c5a89b4cf2d48>.

²⁶ Michael Dorgan. *ICE official rips NYC policies shielding police-beating migrants from deportation*. Fox News. February 6, 2024. Available at <https://www.foxnews.com/us/ice-official-rips-nyc-policies-shielding-police-beating-migrants-deportation>.

²⁷ *ERO New York City arrests previously deported Salvadoran citizen charged with rape*. U.S. Immigration and Customs Enforcement. May 25, 2023. Available at <https://www.ice.gov/news/releases/ero-new-york-city-arrests-previously-deported-salvadoran-citizen-charged-rape>.

forcible compulsion and then released despite a detainer request.²⁸ Another example is a Guatemalan illegal alien who was convicted of rape in the second degree by sexual intercourse with another person who is incapable of consent by reason of being mentally disabled.²⁹ In the case of the now-infamous mob of illegal aliens who beat NYPD officers in Times Square and were released without bail, it is unclear if ICE was able to lodge a detainer request before their release, but there is little doubt that even if ICE had done so, the city would have ignored it too. It is little wonder that more than 50,000 criminal illegal aliens now call NYC home³⁰ or why 85 percent of NYC voters are concerned about accommodating illegal aliens; a plurality don't think NYC should remain a sanctuary city' and 48 percent feel less safe in the city than they felt five years ago according to polling done last year.^{31,32}

Housing illegal aliens at airports is unprecedented and far beyond the scope of the FAA's vision for a nationwide system of airports. FAA policy prohibits the use of aeronautical facilities on airport property for non-aeronautical purposes.³³ In June 2023, the Port Authority sought a license agreement to temporarily house illegal aliens at Building 197 on JFK grounds, a building designated for aeronautical purposes.³⁴ In September, the use agreement was extended until March 31, 2024.³⁵ One of the conditions of the FAA's approval allowing JFK to house illegal aliens on airport property was that "the parties to the Agreement must take every action necessary to provide for the safety and security of the airport and airport users"³⁶ because one of the risk to aviation security posed by housing illegal aliens at the airport. Illustrating the very concern, on February 10, an illegal alien from Ecuador housed at JFK's Building 197 broke into

²⁸ *ERO New York City arrests previously deported Salvadoran citizen charged with rape*. U.S. Immigration and Customs Enforcement. May 25, 2023. Available at <https://www.ice.gov/news/releases/ero-new-york-city-arrests-previously-deported-salvadoran-citizen-charged-rape>.

²⁹ *ERO New York City arrests unlawfully present noncitizen, convicted rapist*. U.S. Customs and Immigration Enforcement. October 31, 2023. Available at <https://www.ice.gov/news/releases/ero-new-york-city-arrests-unlawfully-present-noncitizen-convicted-rapist>.

³⁰ *New Data Reveal Worsening Magnitude of the Biden Border Crisis and Lack of Interior Immigration Enforcement*. Interim Staff Report of the Committee on the Judiciary and Subcommittee on Immigration Integrity, Security, and Enforcement. U.S. House of Representatives. January 18, 2024. Available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf>.

³¹ *New York Migrant Crisis Spells Danger for Democrats*. Redfield & Wilton Strategies. September 13, 2023. Available at <https://redfieldandwiltonstrategies.com/new-york-migrant-crisis-spells-danger-for-democrats/>.

³² *85 percent of New York City voters concerned about accommodating migrants: poll*. The Hill. December 6, 2023. Available at <https://thehill.com/homenews/state-watch/4345802-new-york-city-voters-concerned-accommodating-migrants/>.

³³ *Docket No. FAA 2014-0463 Policy on the Non-Aeronautical Use of Airport Hangars*. Federal Aviation Administration. June 15, 2016. Available at <https://www.govinfo.gov/content/pkg/FR-2016-06-15/pdf/2016-14133.pdf>.

³⁴ *FAA Approval of the License Agreement for the Temporary Use of Building Number 197 at John F. Kennedy International Airport*. Federal Aviation Administration. June 3, 2023.

³⁵ *FAA Approval to Extend the License Agreement for the Temporary Use of Building Number 197 at John F. Kennedy International Airport*. Federal Aviation Administration. September 25, 2023.

³⁶ *Ibid.*

the secure area of the airport. When he was captured by Port Authority police, he was found with scissors and a box cutter. After being arrested and charged with trespass and weapons possession, prosecutors dropped the weapons charge and granted him an adjournment contemplating dismissal, effectively meaning the case will be dismissed if he does not re-offend within a set time.³⁷ It would seem likely in the context of New York’s soft-on-crime, pro-illegal alien policies, these charges were significantly downgraded in order to avoid compromising this illegal alien’s immigration proceedings or chances of receiving immigration relief.

Never before in the history of American aviation has the FAA had to approve the use of airport facilities to house illegal aliens.³⁸ Yet under Democrat leadership of the White House and liberal cities and states, this is now our nation’s reality, with thousands of illegal aliens living in America’s airports. It is a warped repurposing of America’s aviation system and is a direct consequence of the open border policies embraced by the far left and President Biden—and something which is only being made worse by the lawless sanctuary policies of places like New York and NYC.

The Standing Rules of the Senate provide the Committee the authority to “review and study, on a continuing basis” matters related to transportation including aviation.³⁹ In our capacity as members of the Committee, we are committed to robust oversight of the U.S. aviation system, which includes airports receiving federal funding. As such, please the documents requested below and provide written responses to the questions below no later than March 20, 2024:

1. Please provide a copy of the *License Agreement for the Temporary Use of Building Number 197 at John F. Kennedy International Airport* reached with the FAA in June 2023 and extended in September 2023.
2. Has the Port Authority applied for an extension of JFK’s aeronautical use waiver?
3. Have any aeronautical users been displaced by the use of Building 197 for illegal alien⁴⁰ housing? If so:
 - a. Has the Port Authority provided any accommodations for those displaced?
 - b. What accommodations did it provide?
4. Regarding housing illegal aliens at JFK:
 - a. Is Building 197 the only location on Port Authority airport grounds where aliens are housed? If not, what other locations house illegal aliens at JFK?

³⁷ Thomas Tracy. *Migrant at JFK Airport shelter busted for running into secure area*. New York Daily News. February 11, 2024. Available at <https://www.nydailynews.com/2024/02/11/migrant-at-jfk-airport-shelter-busted-for-running-into-secure-area-sources/>.

³⁸ “Email from FAA to Committee staff (September 29, 2023) (on file with the Committee).”

³⁹ S. Rules XXV(1)(f), XXVI(8)(a)(2).

⁴⁰ See *supra* n. 1 for the applicable definition of illegal alien in your responses.

- b. How long have illegal aliens been housed at JFK? At Building 197 in particular?
 - c. What is the longest period of time that any illegal alien was housed at JFK? At Building 197 in particular?
 - d. On average, how long are illegal aliens housed at JFK? At Building 197 in particular?
 - e. How many illegal aliens are housed at JFK as of the date of this letter? At Building 197 in particular?
 - f. Cumulatively, how many illegal aliens were housed at JFK in 2023? At Building 197 in particular?
5. Regarding the illegal aliens authorized to be housed at JFK:
- a. Does the Port Authority verify that the illegal aliens being housed in Building 197 are persons seeking asylum? If so, how?
 - b. Does the Port Authority limit housing to just those aliens who have claimed a fear of persecution and received a positive credible fear determination?
 - c. Does the Port Authority consider illegal aliens who do not claim a fear of persecution to be persons seeking asylum?
 - d. Does the Port Authority consider illegal aliens who receive a negative credible fear determination and nonetheless remain in the country to be persons seeking asylum?
 - e. Must an illegal alien provide the Port Authority with proof they have been processed by the Department of Homeland Security (DHS), such as providing a valid alien or A number? If not, does the Port Authority ever consider an unvetted illegal alien “gotaway,” who evaded Border Patrol and was not processed by DHS to be a person seeking asylum?
6. Regarding the February 10 security breach:
- a. Was it the only instance in which an illegal alien has gained access to a secure area of the airport?⁴¹ If not, please describe each other breach with particularity.
 - b. Was JFK, including the Port Authority Police Department, consulted on whether to downgrade the charges of the Ecuadorean illegal alien, dropping the weapons charge and granting an adjournment contemplating dismissal? If yes, please

⁴¹ *Supra note 3.*

provide copies of any communications referring or relating to the charging and disposition.

7. Did the Port or NYC consult with TSA, including on matters of aviation safety and security, before turning the airport facilities into illegal alien housing?
8. Since the housing of illegal aliens began at JFK, have there been any incidents involving illegal aliens where a law enforcement response was necessary? If so, how many incidents, what were the circumstances of the incidents, and what were the resulting criminal charges if any?
9. Does the Port Authority of New York and New Jersey Police Department have a sanctuary policy in place that limits cooperation with the federal government on matters of immigration enforcement? If so, please provide that policy and describe its practical application.
10. Does the Port Authority Police Department honor ICE detainer requests?
11. Regarding the sources of funds to pay for costs related to housing or otherwise locating illegal aliens at JFK:
 - a. Has JFK Airport or the Port Authority used any airport revenue, concessionaire revenue, landing fees, airline taxes, or other aeronautical or non-aeronautical revenue stream to pay those costs? Please describe each funding source with specificity.
 - b. Has New York City or any New York state agency reimbursed the Port Authority for those costs? If so, what specific agency or department? If not, what was the source of funds used to pay the associated costs?
 - c. Has the Port Authority passed on any of those costs to air carriers?
 - d. Have any taxpayer funds been used directly or indirectly to pay the costs?
 - e. For the construction or maintenance of Building 197, were any Passenger Facility Charge (PFC) funds used? If so, please provide a dollar amount.
 - f. Have any PFC funds been used to service debt that was incurred to build or maintain Building 197?
 - g. Has the Port Authority or the airport taken on any new debt since June of 2023 to pay those costs? If so, does the Port Authority intend to use PFC funds to service this debt?

12. Do the Port Authority and city of New York know the identity of every alien housed at JFK?
13. Did any elected official direct or encourage the Port Authority to house aliens on Port Authority property? If so, whom?
14. In what ways do the Port Authority and city of New York coordinate with federal partners to compare identities to terror watchlists?

The crisis of illegal immigration brought on by the Biden administration is not just untenable, it is inhumane. We encourage you to use the authorities at your disposal to zealously oppose any future attempts to house illegal aliens at JFK or any other Port Authority airports.

Thank you for your attention to this matter.

Sincerely,



Ted Cruz
United States Senator



Tedd Budd
United States Senator



JD Vance
United States Senator



Todd Young
United States Senator



Dan Sullivan
United States Senator

Cc: Kathy Hochul, Governor of New York
Phil Murphy, Governor of New Jersey
Eric Adams, Mayor of New York City