



THE MURDER OF KAYLA HAMILTON: A CASE FOR IMMIGRATION ENFORCEMENT AND BORDER SECURITY

Interim Staff Report of the
Committee on the Judiciary
and the
Subcommittee on Immigration Integrity, Security, and Enforcement
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EXECUTIVE SUMMARY

Under the Biden Administration’s radical open-borders policies, Secretary Alejandro Mayorkas and the Department of Homeland Security (DHS) continue to allow dangerous criminal aliens into American communities. Since January 2021, U.S. Customs and Border Protection has encountered over 5.5 million illegal aliens along the southwest border.¹ These are just the illegal aliens who have been caught. There are an additional 1.5 million known “gotaways” who have crossed the border undetected.² In this mass of more than 7 million illegal aliens—from nations as far away as Afghanistan³ and China⁴—U.S. officials have apprehended suspected terrorists and violent criminals.⁵ But there is no telling how many more dangerous illegal aliens are getting across the border unseen on Secretary Mayorkas’s watch.

The Committee on the Judiciary and its Subcommittee on Immigration Integrity, Security, and Enforcement are charged by the House of Representatives with conducting oversight of federal immigration laws.⁶ Secretary Mayorkas and DHS claim that immigration officials adequately vet illegal aliens for ties to criminal or terrorist activity.⁷ But it is clear from public reporting and information available to the Committee and Subcommittee that these checks are not sufficient. The only true way to ensure the safety and security of all Americans is to enforce U.S. immigration law, eliminate the incentives that draw illegal aliens to the border, and adequately secure U.S. borders.

A tragic example of the failure to enforce U.S. immigration law under Secretary Mayorkas’s watch is the murder and sexual assault of 20-year-old Kayla Hamilton in Aberdeen, Maryland in July 2022.⁸ Kayla was senselessly killed by a 16-year-old illegal alien and MS-13 gang member from El Salvador who was allowed to enter the U.S. as an unaccompanied alien child (UAC).⁹ Local authorities arrested the alien in January 2023.¹⁰ In February 2023, Chairman

¹ U.S. Customs and Border Protection, *Southwest Land Border Encounters*, U.S. DEP’T OF HOMELAND SECURITY (last accessed May 20, 2023), <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> [hereinafter CBP Southwest Land Border Encounters].

² Neil Munro, *Border Patrol Chief: 1.5 Million ‘Gotaway’ Migrants During Biden’s Term*, BREITBART (Mar. 15, 2023), <https://www.breitbart.com/politics/2023/03/15/border-patrol-chief-1-5-million-gotaway-migrants-during-bidens-term/>.

³ Malik Earnest & CBS 8 Staff, *Afghan on terrorist watchlist arrested at U.S.-Mexico border crossing in San Diego*, CBS 8 SAN DIEGO (May 14, 2023, 5:04 p.m.), <https://www.cbs8.com/article/news/investigations/beyond-the-border/terrorist-arrested-at-us-mexico-border-crossing-in-san-diego/509-2db0f675-676a-403d-a396-8bb80749f441>.

⁴ Han Chen & Stef W. Kight, *Inside the boom in Chinese migrants at the southern border*, AXIOS (Mar. 29, 2023), <https://www.axios.com/2023/03/29/uptick-chinese-migrants-southern-border>.

⁵ U.S. Customs and Border Protection, *CBP Enforcement Statistics Fiscal Year 2023*, U.S. DEP’T OF HOMELAND SECURITY (last accessed May 17, 2023), <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

⁶ Rules of the U.S. House of Representatives, R. X (2023).

⁷ *Secretary Mayorkas Remarks at a Media Availability Outlining Planning and Operations Ahead of the Lifting of the Title 42 Public Health Order*, U.S. DEP’T OF HOMELAND SECURITY (May 10, 2023), <https://www.dhs.gov/news/2023/05/10/secretary-mayorkas-remarks-media-availability-outlining-planning-and-operations> (“We screen and vet individuals whom we encounter.”)

⁸ Emma Colton, *MS-13 gang member arrested for murder of 20-year-old Maryland woman with autism*, FOX NEWS (Jan. 21, 2023), <https://www.foxnews.com/us/ms-13-gang-member-arrested-murder-20-year-old-maryland-woman-autism>.

⁹ Case file documents reviewed by Committee staff.

¹⁰ Colton, *supra* note 8.

Jordan and Subcommittee Chairman McClintock demanded information from the Biden Administration about this alien's entry into the U.S.¹¹

The Committee's and Subcommittee's oversight has revealed that the Biden Administration insufficiently vetted Kayla's murderer and allowed him to enter the country.¹² Tragically, Secretary Mayorkas and his department missed key warning signs about the alien's propensity for violence, which law enforcement officials investigating the murder later uncovered.¹³ The oversight has revealed:

- Years before coming to the U.S., the alien who murdered Kayla was arrested in El Salvador for "illicit association" with the dangerous MS-13 gang.¹⁴
- Law enforcement officials investigating Kayla's murder after the fact verified this information by merely contacting El Salvadoran officials.¹⁵
- Law enforcement officials investigating Kayla's murder also noticed the alien's gang tattoos, a fact not disclosed in the alien's case file held by the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) at the time of his placement or in the DHS alien file at the time of his apprehension.¹⁶
- The case note about gang tattoos by law enforcement officials, dated August 2022, came mere months after the alien was in the care of DHS, ORR, and his sponsor.¹⁷
- While the alien's homicide charge was pending and after his affiliation with MS-13 was disclosed, authorities still placed the alien in a foster home with other children present.¹⁸

The Biden Administration's open-borders policies are dangerous and do not prioritize the safety of American citizens. The Department of Homeland Security is failing to perform even the most basic of measures to ensure that the aliens entering the U.S. are not dangerous criminals or known gang members. The Biden Administration's disregard for the safety of Americans directly resulted in the tragic and—sadly, preventable—murder of Kayla Hamilton.

¹¹ Letter from Jim Jordan, et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Secretary, U.S. Dep't of Homeland Security (Feb. 27, 2023); Letter from Jim Jordan, et al., Chairman, H. Comm. on the Judiciary, to Xavier Becerra, Secretary, U.S. Dep't of Health and Human Services (Feb. 27, 2023).

¹² Case file documents reviewed by Committee staff.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; see also Anna Giaritelli, 'He Should Have Never Been Allowed In': Mother Demands Border Fix After Daughters Murder by Suspected MS-13 Immigrant, WASH. EXAM. (Feb. 1, 2023), <https://www.msn.com/en-us/news/crime/heshould-have-never-been-allowed-in-mother-demands-border-fix-after-daughter-s-murder-by-suspected-ms-13-immigrant> (reporting that the alien was arrested a foster home).

Not all aliens are criminals, but even one crime committed against an American by a criminal illegal alien incentivized into this country by the Biden Administration is one too many. The House of Representatives has passed H.R. 2, the strongest immigration enforcement and border security legislation in recent history.¹⁹ As the American people await Senate action on this vital legislation, the Committee and Subcommittee will continue to perform much-needed oversight of Secretary Mayorkas and the Biden Administration's immigration policies.

¹⁹ Secure the Border Act of 2023, H.R. 2, 118th Cong. (2023).

KAYLA HAMILTON'S MURDER

In January 2023, police in Aberdeen, Maryland, arrested a 17-year-old illegal alien from El Salvador for the brutal sexual assault and murder of 20-year-old Kayla Hamilton in July 2022.²⁰ Kayla had recently moved to the area with her boyfriend.²¹ Law enforcement officials learned that the alien was a member of MS-13, a violent street gang with more than 10,000 members in the United States.²² This alien had been allowed to enter the U.S. as an unaccompanied alien child (UAC) in March 2022 in the Rio Grande Valley Sector.²³ In March 2022, 14,137 UACs were allowed to enter the U.S., with 7,128 of those UACs entering in the Rio Grande Valley Sector.²⁴

Background on Unaccompanied Alien Children

The Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) is charged with the care and placement of UACs encountered at the border and referred to them by Customs and Border Protection (CBP).²⁵ Under the 2008 Trafficking Victims Protection Reauthorization Act, minors from contiguous countries (such as Mexico) can be immediately returned to their home country (if they consent, have not been trafficked, and do not have a credible fear of persecution).²⁶ However, minors from non-contiguous countries, such as El Salvador, must be placed in the custody of ORR pending lengthy removal proceedings in immigration court.²⁷ After their transfer to ORR, UACs are generally placed with a sponsor and released into the United States.²⁸

The number of UAC encounters at the border has risen sharply during the Biden Administration. Since January 2021, 380,456 UACs have crossed the southwest border and been placed in ORR custody.²⁹ During fiscal year (FY) 2022, CBP encountered 152,057 UACs, the most in a single year and a more than 400 percent increase over the last full fiscal year of the Trump Administration (FY 2020), when there were only 33,239 UACs encountered by CBP.³⁰

²⁰ Jeff Hager & Ryan Dickstein, *Police: Teen gang member charged in strangling death of Aberdeen woman with autism*, WMAR (Jan. 19, 2023), <https://www.wmar2news.com/news/local-news/police-teen-gang-member-charged-in-strangling-death-of-aberdeen-woman-with-autism>.

²¹ *Id.*

²² Office of Public Affairs, *Four MS-13 Members Indicted for 10 Murders, Kidnapping and Racketeering Charges*, U.S. DEP'T OF JUSTICE (Aug. 4, 2021), <https://www.justice.gov/opa/pr/four-ms-13-members-indicted-10-murders-kidnapping-and-racketeering-charges>.

²³ Giaritelli, *supra* note 18.

²⁴ CBP Southwest Land Border Encounters, *supra* note 1.

²⁵ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5077 (2008) (8 U.S.C. § 1232(b)(1)).

²⁶ *Id.*

²⁷ *Id.*

²⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-180, *Unaccompanied Children: HHS Can Take Further Action to Monitor Their Care* (Feb. 2016), <https://www.gao.gov/assets/gao-16-180.pdf>.

²⁹ CBP Southwest Land Border Encounters, *supra* note 1.

³⁰ *Id.*

The surge of illegal aliens has resulted in the Biden Administration’s inability to adequately keep track of the aliens, including UACs, it has allowed to enter the country. According to press reports in September 2021, “[r]oughly one-in-three calls made to released migrant kids or their sponsors between January and May went unanswered” and “the data also indicates calls aren’t happening with the frequency they should.”³¹ From January 20, 2021, through May 2021, HHS discharged 32,000 children and teens—but the government placed fewer than 15,000 follow-up calls.³² In the last two years, HHS has lost track of more than 85,000 children.³³ As one witness explained at a recent Subcommittee hearing:

Not only did [President Biden] relax border controls and suppress immigration enforcement inside the country, when the numbers predictably exploded his officials responded by gutting what few meager protections for child migrants still existed. As HHS Secretary [Xaiver] Becerra revealed in his now notorious video statement, the goal was to release these kids faster, with few questions asked, to make it a more efficient assembly line. And this assembly line is staffed by crony contractors spending billions of taxpayer dollars on what is now a pipeline for child labor trafficking.³⁴

Committee and Subcommittee Oversight of Kayla Hamilton’s Murder

On February 27, 2023, Chairman Jordan and Subcommittee Chairman McClintock sent letters to DHS Secretary Mayorkas and to HHS Secretary Becerra requesting all case file materials for the unaccompanied alien child arrested in connection with Kayla’s murder.³⁵ While DHS provided the alien file, HHS declined to produce the requested materials in full to the Committee—citing, amazingly, the government’s concern for the privacy of the criminal alien accused of Kayla’s murder. It offered to allow Committee staff to review the alien’s case file *in camera* with certain redactions. As an accommodation to the HHS, and to obtain the information without undue delay, the Committee and Subcommittee agreed to the *in camera* review.

How Secretary Mayorkas and the Biden Administration Failed Kayla Hamilton

The Committee’s and Subcommittee’s review of the alien’s case file revealed new details about how the Biden Administration’s lax enforcement of immigration law allowed a violent criminal into the U.S. It is quite likely that had Secretary Mayorkas and the Department of

³¹ Stef W. Kight, *Exclusive: Government can't reach one-in-three released migrant kids*, AXIOS (Sept. 1, 2021), <https://www.axios.com/2021/09/01/migrant-children-biden-administration>.

³² *Id.*

³³ Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. TIMES Feb. 28, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

³⁴ “*The Biden Border Crisis: Exploitation of Unaccompanied Alien Children*”: *Hearing before the Subcomm. on Immigration Integrity, Security, & Enforcement of the H. Comm. on the Judiciary*, 118th Cong. (2023) (statement of Jessica Vaughn, Center for Immigration Studies).

³⁵ Letter from Jim Jordan, et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Secretary, U.S. Dep’t of Homeland Security (Feb. 27, 2023); Letter from Jim Jordan, et al., Chairman, H. Comm. on the Judiciary, to Xavier Becerra, Secretary, U.S. Dep’t of Health and Human Services (Feb. 27, 2023).

Homeland Security adequately vetted this alien when he was apprehended at the border and had Secretary Becerra and the Department of Health and Human Services adequately vetted this alien before placement with a sponsor, the tragedy of Kayla’s murder would have been avoided. The alien’s known gang affiliation would have resulted in placement in a secure facility for criminal UACs rather than allowing him to roam the streets of Aberdeen freely.³⁶

According to the alien’s case file, the alien was apprehended by Border Patrol in Texas on March 23, 2022, and then referred to ORR.³⁷ According to the alien, members of his family paid \$4,000 to a “guide” who smuggled him to the southwest border.³⁸ On May 3, 2022, ORR placed the alien with a sponsor, his alleged “first cousin,” in Maryland.³⁹ The alien ran away from that home just a month later.⁴⁰

The case file also provides details about the alien’s violent criminal past. As revealed in his case file, the alien had been arrested by police in El Salvador on January 21, 2020, for illicit association with the MS-13 gang.⁴¹ The MS-13 association was not discovered until after Kayla’s murder.⁴² Aberdeen Police confirmed the MS-13 affiliation.⁴³ This fact is significant not only because it contradicts the alien’s narrative to federal immigration authorities that he fled El Salvador to escape gang-related threats, but also because the Biden Administration should have uncovered this key fact during its vetting of the alien after his encounter along the border.

The alien’s case file also includes information from law enforcement officials dated August 2022, noting that the alien had tattoos affiliated with gang activity.⁴⁴ There was no indication in the case file that DHS or HHS noted gang-affiliated tattoos on his body at the time of his apprehension or placement, respectively.⁴⁵ The alien came to the U.S. with no money and his sponsor did not provide him with an allowance.⁴⁶ The short period between the alien’s entry into the U.S. and his arrest, the alien’s prior arrest for illicit gang association, and his lack of financial resources may suggest that the alien had the gang-affiliated tattoos upon his arrival at the southwest border. It is also possible that the alien received the tattoos after entering the U.S. In this case, the reason the alien gave for leaving El Salvador—that he was escaping the gangs there—appears to have been a pretext. In any event, DHS did not sufficiently screen this alien for potential gang affiliation at the time of his apprehension or adequately safeguard Americans by ensuring that he would not be released into the country.

In addition to having indications of the alien’s criminality, the alien’s case file also shows that while his homicide charge was pending and after his affiliation with MS-13 was known,

³⁶ 8 U.S.C. § 1232 (c) (If a determination is made that an unaccompanied child “poses a danger to self or others or has been charged with having committed a criminal offense,” such an unaccompanied alien child may be placed in a secure placement).

³⁷ Case file documents reviewed by Committee staff.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Giaritelli, *supra* note 18.

⁴⁴ Case file documents reviewed by Committee staff.

⁴⁵ *Id.*

⁴⁶ *Id.*

authorities placed him in a foster home with other children.⁴⁷ Specifically, in file notes from August 2022, an Immigrations and Customs Enforcement (ICE) official expressed concern for the safety of the other children present in the foster home with this violent alien.⁴⁸ It is unclear, however, from the case file how long the alien remained there after these concerns were raised or if any children were harmed as a result of his placement there.

The alien's HHS case file is also replete with notations from HHS caregivers and officials that the alien had "no behavioral issues," was "a respectful young man," and "demonstrated good judgment and age-appropriate behaviors."⁴⁹ These conclusions, in light of his brutal murder of Kayla, were obviously wrong.

Finally, the alien's case file materials contains multiple factual inconsistencies that raise serious questions about the adequacy of the Biden Administration's vetting. For example:

- The person referenced throughout the file as his "first cousin," who the alien refers to as his aunt, is indicated to be a woman living in Maryland with multiple children.⁵⁰ However, in one place in his file, this "first cousin" is also described as a male with no parenting experience.⁵¹
- The case file notes the alien completed calls with "his father (sponsor)," which contradicts the consistent narrative the alien asserted throughout his file that his biological father had never been a part of his life.⁵²
- The case file notes that the alien had no siblings, but also that he had a half-brother.

The file as made accessible to Committee staff was also replete with unnecessary redactions, which only served to obscure important factual details and hamper the Committee's and Subcommittee's oversight.

Conclusion

The Biden Administration's open-borders policies have created vulnerabilities that criminal aliens and gang members exploit to the detriment of American citizens. The sad fact is that Secretary Mayorkas and the Biden Administration have failed to implement basic screening and vetting measures—such as checking with law enforcement officials in an alien's home country—to ensure that those entering the U.S. are not dangerous criminals or known gang members. At the same time, they continue to tell the American people that illegal aliens encountered along the southwest border are vetted adequately. This callous disregard for the safety of Americans, in the name of expedited alien processing, resulted in the tragic and preventable murder of Kayla Hamilton.

⁴⁷ Case file documents reviewed by Committee staff.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

In passing H.R. 2, the House of Representatives has acted to secure the border and eliminate the incentives for illegal immigration. Now it is up to the Senate and the Biden Administration to uphold their responsibility to ensure the safety and security of the American people. Unless this Biden Administration chooses to reverse course, the open-borders policies of Secretary Mayorkas and President Biden will continue to produce tragedies like this in the future. In the interim, the Committee and Subcommittee will continue to perform the necessary oversight to hold the Administration accountable for tragedies such as Kayla Hamilton's murder.