

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0919**

May 26, 2022

The Honorable Chris Mangus  
Commissioner  
U.S. Customs and Border Protection  
90 K St. NE  
Washington, D.C. 20002

Dear Commissioner Mangus:

We write today seeking clarification and answers about the supply of infant formula at U.S. Customs and Border Protection (CBP) detention facilities along the southern border. As you know, the United States is currently experiencing an extreme shortage of infant formula—which is a direct result of severe supply chain disruptions and the recent voluntary recall by Abbott Laboratories relating to certain types of infant formula from a nutrition facility in Sturgis, Michigan.<sup>1</sup>

Even with the recently-issued preliminary injunction in Texas that stalled the Biden administration’s decision to terminate the public health authority known as Title 42, CBP agents and the several communities of the United States still consistently grapple with the impacts of the ongoing and record-breaking surge of illegal immigration at our southern border. Therefore, it’s important for the sake of transparency that Congress and the American people understand vital details about CBP’s contracting and procurement process relating to infant formula, and are provided with additional information about the overall distribution process of infant formula by CBP personnel to individuals that purposefully decide to bypass our nation’s legal immigration system.

To begin, the 1997 Flores Settlement Agreement (the Agreement) set certain standards for U.S. immigration officials. The Agreement mandates that all immigration-related detention facilities provide food—including infant formula—and drinking water to individuals and families that enter the United States illegally.<sup>2</sup> In the same regard, a 2015 CBP guidance document outlines certain illegal immigrant detention standards and similarly mandates that “food . . . be appropriate for at-risk detainees’ age and capabilities (such as formula and baby food).”<sup>3</sup> Although there may be an argument that infant formula would be better allocated to individuals that are legally in the United States, we understand that many mothers with infants are illegally crossing the southern

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<sup>1</sup> See Katherine Fung, *White House Defends Sending Baby Formula to Border as ‘Morally Right’*, NEWSWEEK (May 2022), <https://www.newsweek.com/white-house-defends-sending-baby-formula-border-morally-right-1706560>; see also U.S. FOOD AND DRUG ADMINISTRATION, *Powdered Infant Formula Recall: What to Know* (May 2022), <https://www.fda.gov/consumers/powdered-infant-formula-recall-what-know>.

<sup>2</sup> See Madison Czopek, *Providing Baby Formula for Babies Held at the Border is a Legal Requirement*, TAMPA BAY TIMES (May 2022), <https://www.tampabay.com/news/nation-world/2022/05/19/providing-baby-formula-for-babies-held-at-the-border-is-a-legal-requirement/>.

<sup>3</sup> U.S. CUSTOMS AND BORDER PROTECTION, *National Standards on Transport, Escort, Detention, and Search* (Oct. 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf#page=22>.

border on a daily basis and that the Agreement is the law of the land—previously followed by both Republican and Democrat administrations. Therefore, it’s our understanding that there are stockpiles of infant formula at CBP detention facilities along the southern border as required by federal law.

Also noteworthy, subpart 4.6 of the Federal Acquisition Regulation outlines several uniform reporting requirements for the Federal Procurement Data System (FPDS).<sup>4</sup> Specifically, FPDS provides a comprehensive web-based tool for federal agencies to report contractual actions that are above the “micro-purchase threshold.”<sup>5</sup> Under current law, the micro-purchase threshold is \$10,000—which means that any federal contract purchase under \$10,000 doesn’t have to be submitted to the FPDS.<sup>6</sup> In result, the American public cannot obtain data about the current and legally-required stockpile of infant formula at the southern border.

With the record-breaking number of illegal immigrants crossing our southern border on a monthly basis, the expected illegal immigration surge if Title 42 authority is terminated, coupled with the fact that the FPDS’s micro-purchase threshold doesn’t provide the necessary transparency to determine an accurate accounting of how much infant formula is currently at CBP detention facilities, we believe that American taxpayers would significantly benefit from detailed responses to the following questions:

1. How many CBP detention facilities are currently in operation and how many facilities have been added due to the expected influx of illegal immigration resulting from the potential expiration of Title 42?
2. Over the past two decades, how many infants have been processed at CBP detention facilities? How many infants are being processed at CBP detention facilities on an annual basis?
3. Since the Agreement requires that CBP detention facilities have the basic necessities for illegal immigrants and their families, what is the contracting and procurement process of obtaining infant formula for each detention facility along the southern border?
4. Over the past two decades, how much infant formula has been allocated and distributed to CBP detention facilities? What is the total cost of providing infant formula to each facility? How much does CBP pay for each unit of infant formula? How frequent do shipments of infant formula arrive at CBP detention facilities?
5. What is the current amount of infant formula stockpiled at CBP detention facilities? How long have the stockpiles of infant formula been at each CBP detention facility? What type of infant formula is currently provided to illegal immigrants at CBP detention facilities?
6. What percentage of the infant formula is being imported and subsequently shipped to CBP detention facilities in comparison to infant formula that’s being manufactured domestically?
7. How long does each individual container of infant formula last before it expires? How much infant formula is being thrown out due to the unit’s expiration? Over the past year, how much infant formula has been thrown out at CBP detention facilities?
8. How would the expiration of Title 42 impact the total allocation and distribution of infant formula at CBP detention facilities? Do you believe that we need more infant formula at CBP detention facilities?

Overall, we want to reemphasize our robust support and appreciation of CBP agents’ hard work, sacrifice, and service to the United States in upholding our nation’s legal immigration system. With the record-breaking number of illegal immigrants entering our country on a month-to-month basis, along with the great challenges that will arise from the expected escalation of illegal immigration resulting from the expiration of Title 42, providing CBP agents with the necessary resources to combat and respond to illegal immigration should be a

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<sup>4</sup> See Federal Acquisition Regulation, *Subpart 4.6—Contract Reporting*, pg. 4602 (2019), <https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf#page=131>.

<sup>5</sup> *Id.*

<sup>6</sup> See National Defense Authorization Act for FY2018, Pub. L. No. 115-91, § 806(a), 1283, 1456 (2017), <https://www.congress.gov/115/plaws/publ91/PLAW-115publ91.pdf#page=174>.

top priority for Congress. In the same regard, we must always promote transparency in the interest of the American public. Therefore, we request answers to the aforementioned inquiries within thirty days of receipt, along with any additional information or CBP files that you believe would be helpful as America continues to combat the current infant formula shortage.

Sincerely,



Rep. Byron Donalds  
Member of Congress



Rep. Nancy Mace  
Member of Congress



Rep. John Carter  
Member of Congress



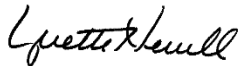
Rep. Gus Bilirakis  
Member of Congress



Rep. Ralph Norman  
Member of Congress



Rep. Clay Higgins  
Member of Congress



Rep. Yvette Herrell  
Member of Congress

cc: The Honorable Alejandro Mayorkas, Secretary  
U.S. Department of Homeland Security

The Honorable Bennie Thompson, Chairman  
House Committee on Homeland Security

The Honorable John Katko, Ranking Member  
House Committee on Homeland Security

The Honorable Carolyn Maloney, Chairwoman  
House Committee on Oversight and Reform

The Honorable James Comer, Ranking Member  
House Committee on Oversight and Reform