



The Human Cost of an Open Border

The United States is spending billions of dollars to help Ukraine defend itself from the Russian invasion, while welcoming a flood of illegal immigrants crossing our own southern border. This is an invasion of another sort. Not only are hundreds of thousands of people being apprehended and released, but hundreds of thousands crossing the border are not being apprehended at all. The illegal border-crossers are coming from around the globe including from Latin America, the Caribbean, Africa, the Middle East and Asia.

This open-border policy is wreaking havoc in our cities and will have long-term fiscal, social and political consequences for the United States. Those crossing the border include drug and sex traffickers. They include terrorists. We know that at least 23 of those apprehended in fiscal year 2022 include people on the government's terrorist watch list. How many other terrorists crossed who escaped apprehension remains unknown.

Alarming Numbers

Since President Biden took office in January 2021, the number of illegal immigrants in the U.S. is estimated to have increased by 1.2 million to a total of 11.5 million through February 2022, according to Steven A. Camarota, director of research at the Center for Immigration Studies. The number of government-reported illegal immigrant crossings on the southern border in fiscal year 2021 (ending last September 30) reached a record 1.6 million, four times the number in the previous fiscal year.¹ Since then, through April this year, more than 1.2 million illegal immigrants have been apprehended, not including 364,000 "gotaways".² Most of those apprehended are released into the U.S.—more than 836,000 in the same period.³ In March and April alone, Border Patrol agents took an average of 6,900 migrants into custody every day.⁴

During both the Obama and Trump presidencies, illegal crossings dropped to below 350,000 annual levels on several occasions. The lower number of crossings under the Obama and Trump administrations can be attributed to a then improving Mexican economy and Mexico's border enforcement activities, but also reflected stronger U.S. border

enforcement. More than 3 million illegal aliens were deported during the Obama administration.⁵ Obama came under attack from his left, who called him "Deporter in Chief," but in the end, Obama deported more illegal border crossers than Trump. However one feels about Obama's or Trump's border policies, the border is out of control today.

Even more alarming is that illegal crossings are projected to accelerate further. In anticipation of Biden's plan to end Covid-19 restrictions at the border (now tied up in court), Homeland Security is *preparing for 18,000 encounters a day*.⁶

The Northern Triangle countries in Central America (Honduras, Guatemala and El Salvador) are now the major source of illegal crossings. At the same time, we are seeing an increase from other countries. Comparing 2007 to 2021 crossings shows that those from Ecuador rose eight-fold, from over 11,000 to over 95,000. Similar rises are seen for Brazil (around 6,000 to over 56,000), Nicaragua (around 2,000 to close to 50,000), Venezuela (around 1,000 to over 47,000), Haiti (around 4,500 to over 45,000), and Cuba (around 10,000 to over 38,000).⁷

The Biden administration seems intent on encouraging illegal border crossings based on its actions and omissions: suspending construction of a border wall begun by President Trump, canceling a bilateral agreement to "Remain in Mexico" (a policy that those seeking asylum in the United States stay in Mexico while their cases are heard), planning to end pandemic restrictions on entry, and *deliberately failing to enforce the immigration laws at even a minimal level*. The administration has spent tens of millions of dollars in grants to various nonprofits to house illegal immigrants and to provide legal representation to them if they are facing deportation. The administration proposed in its budget for fiscal year 2023 to spend \$4.5 million over the next ten years for legal defense for illegal immigrants.

Not only is this wave of illegal aliens a huge burden on U.S. taxpayers; it involves a significant human cost to migrants themselves and to Americans who may be victimized by criminal or terrorist aliens. Ronna McDaniel, chairwoman of the National Republican Committee, accurately assesses the

situation when she notes, “Sex trafficking and drug smuggling have become part of everyday life at the border; cartels are capitalizing on chaos to strengthen their illegal streams of revenue.”⁸ She points out that fentanyl, one of the world’s deadliest drugs, is flowing through the border. Thousands of young women are coming across the border to find a world of sex slavery—prostitution and pornography. Not infrequently, migrants die during perilous smuggling operations.

Human smuggling is big business for the Mexican cartels. In February 2022, Mexican criminal cartels earned an estimated \$14 million a day trafficking families, women and single adults over the southern border. “Trafficking is a multibillion-dollar industry,” former Tucson Border Patrol Chief Roy Villareal told Fox News.⁹ Many of those who cross the border through these cartels become “essentially indentured servants,” he said, who have to work off this debt for long periods of time. Fees to smuggle children or a family can run as high as \$5,000 and as much as \$9,000 for a single adult.

Sex Trafficking, Lethal Drugs

Many of the children (17 years old and younger) crossing the southern border travel not with parents or family members, but with human smugglers. Homeland Security agent Michael P. Conlon, whose New York office monitors sexual exploitation, has prosecuted cases of girls as young as 14 who have been forced into prostitution.¹⁰ He describes how these children are held in apartments and driven to appointments to have sex with men, sometimes up to 15 to 20 men in a single evening.

The number of children being directed into prostitution or pornography is not known. The U.S. Border Patrol keeps records of encounters with unaccompanied children. The number of unaccompanied children rose from around 18,000 children in fiscal year 2020 to more than 47,642 in fiscal year 2021. This was a 163 percent increase in just one year—and it is still rising. Current border policy places pressure on border agents to release families and unaccompanied minors into the U.S. Border Control agents do not have time to investigate adults posing as parents of these children or to conduct DNA tests to make sure they are biologically related.

Teresa Ulloa Ziaurriz, who works for the Coalition Against Trafficking International, estimates that 60 percent of Latin American children sent across the border alone or with smugglers are used by the cartels in child pornography, prostitution or drug trafficking. Often sex exploitation begins after these child migrants or young migrant females have been relocated in the United States, when they are sold as sex workers or slave laborers. This is occurring not just in border towns, but in big cities, suburban neighborhoods and rural communities across America.

Methamphetamine, fentanyl, cocaine and other illegal drugs are flooding across the southern border into our cities, towns

and suburbs. Fentanyl deaths have reached new heights. Fentanyl-related deaths exceed gun- and auto-related deaths combined. The U.S. Centers for Disease Control estimated on May 11 that *in 2021 a new record high of more than 107,000 Americans died of drug overdoses, a 15 percent increase from the previous record set the year before.* Of those deaths, about 71,000 were from fentanyl and other synthetic opioids. These are staggering numbers. Drug cartels have taken full advantage of our porous border.

Fentanyl is a highly addictive synthetic opioid found in all 50 states. Drug cartels and drug traffickers mix it with other types of drugs in powders and pills. U.S. Drug Enforcement Administration (DEA) administrator Anne Milgram wrote in an April 6 letter to local, state and federal law enforcement partners that they should “assume that all drugs encountered during enforcement now contain fentanyl.”¹¹ Fentanyl is 100 times more potent than heroin. Just two milligrams of fentanyl are considered a lethal dose. Some of the counterfeit pills crossing the border or manufactured in the U.S. contain 5 milligrams of fentanyl. Illicit fentanyl is primarily manufactured in labs, many of them found in China. As a consequence, there is a direct link between Chinese producers and Mexican cartels that smuggle the drugs into the United States.

The DEA has confronted China about providing synthetic opioid drugs and about its drug trafficking activities. China responded by saying that it is cracking down, but Chinese enforcement, whatever its extent, has not stopped the flow of fentanyl into the United States.¹² Border control is the first step in cutting the supply chain.

Terrorists Crossing

In 2021 federal agents captured 23 people on the government’s terror watch list crossing the southern border, including men from Saudi Arabia and Yemen. This information came from a Freedom of Information Act request by Fox News.¹³ Department of Homeland Security Secretary Alejandro Mayorkas has been under pressure to release the names and numbers of those stopped at the border who appear on the terror watchlist. In late March Congressmen James Comer (R-KY) and John Katko (R-NY) wrote Mayorkas, “It is no secret that terrorists and bad actors attempt to exploit weakness in border security and vetting to enter the United States.”¹⁴

Their letter came in response to Mayorkas’s lack of concern about the terrorist threat as expressed in his mid-March testimony before the Homeland Security Committee of the House of Representatives. He told the committee that terrorists sneaking into the United States via the southern border were “not a new phenomenon” and that the security infrastructure to prevent terrorist infiltration has “only grown in sophistication throughout the years.”¹⁵ Those on the ground enforcing border control took issue with this assessment.¹⁶ Previously, in August 2021, former Border Patrol chief Rodney

Scott, whom Biden had pushed out months earlier, admonished, “I firmly believe that it is a national security crisis.”¹⁷ He warned that terrorists are blending in with thousands of illegal immigrants coming through Central America and Mexico to slip into the U.S.

Fears of terrorist infiltration have been heightened since the Taliban took power with the U.S. withdrawal from Afghanistan. As the Taliban marched through Afghanistan, they released thousands of dangerous prisoners, many of whom are eager to strike back at America. Arizona Attorney General Mark Brnovich, who is now running for U.S. Senate, cautioned in an op-ed last August that terrorists are finding a “soft underbelly” to sneak into the U.S. at our southern border because of lax enforcement policies.¹⁸

How To End the Crisis

Can things get worse at our southern border? The answer is an emphatic “Yes”. The real questions are how much worse and is there any light at the end of the tunnel?

Some Democrats are trying to distance themselves from the administration’s border policies. When the administration announced in April that it wanted to end the Title 42 restriction, a number of Democrats up for reelection came out against the lifting of the rule. The Title 42 policy, started during the Trump administration, allowed the U.S. to turn back border crossers on the grounds of protecting the country from the Covid-19 pandemic. Pro-immigration activists pushed Biden to end the restriction for over a year. Finally in April, the Biden administration caved and announced it would rescind the rule on May 23. As soon as the announcement was made, Homeland Security officials began preparing contingency plans for managing as many as 18,000 encounters a day at the border once the ban is lifted.

This means that they are preparing for 3.2 million illegal immigrants to cross our borders in the six months following lifting of the restriction. Even if only half of this number appeared, it would break all previous records.

The current administration is jeopardizing the safety and security of American citizens as well as immigrants. As Rep. Fred Keller (R-PA) observes, “Illegal immigration propagates a system whereby drug smuggling, extortion, and human trafficking run rampant across our communities.”¹⁹ Politicians of both parties in the U.S. like to describe the current immigration system as “broken” and in need of reform. Yet comprehensive immigration reform has failed in both Republican and Democratic administrations in recent decades.

Democrats are pressured by open border activists, while Republicans face both immigration hawks and businesses seeking low-wage workers. Democratic politicians perceive a

large influx of low-skill migrants as future Democratic voters; immigration hawks view such an unvetted influx as bringing crime and disorder, harming the prospects of low-wage Americans who are already here, and creating an insatiable demand for welfare benefits in a country already facing a mountain of public debt and skyrocketing inflation. All this makes reaching compromise on a fixing a broken immigration system difficult.

*The present legal framework for southern border enforcement is a Swiss cheese of statutes, court decisions, international commitments, and executive-branch leniency that amounts to abuse of enforcement discretion. Congress and the current administration certainly have the power to act to close some of the holes. Democrats and Republicans know that the crisis on the southern border deeply concerns voters.*²⁰

While awaiting elusive immigration reform by Congress, the administration could take constructive steps by changing course on lifting the Title 42 pandemic policy as well as the “Remain in Mexico” policy. Secretary Mayorkas should build the border wall (which he recently acknowledged is a legal requirement) and get tough on phony claims for asylum. By law, illegal aliens claiming asylum should be either detained pending adjudication or turned back at the border, not released into the interior of the U.S. He should support, not undermine, the border patrol. Morale in the border patrol is at an all-time low, as it is overwhelmed by the surge and demoralized by attacks on its agents.

A Lawless Refusal to Enforce

The Title 42 pandemic policy was scheduled to end May 23 but its termination has been challenged in court by 24 states, and a federal judge in Louisiana issued a preliminary injunction on May 20 blocking the termination. An appeal is planned. The Biden administration’s attempt to end the “Remain in Mexico” policy (also known as the Migrant Protection Protocols) is currently being reviewed by the U.S. Supreme Court, which is expected to issue a decision before the end of June. This policy requires non-Mexican Western Hemisphere migrants seeking asylum to remain in Mexico while awaiting hearings of their cases in the U.S. immigration system. The policy is subject to exceptions including for unaccompanied minors, plus other exceptions added by the Biden administration. The policy was adopted by the Trump administration to deter rampant frivolous asylum claims.

Secretary Mayorkas clearly has no intention of tightening the southern border. Under his leadership the Department of Homeland Security has made regulatory changes that shift the power to deport aliens from immigration judges to civilian bureaucrats, while allowing aliens multiple means of delaying and appealing decisions, according to a lawsuit filed in April by Texas Attorney General Ken Paxton.²¹ Asked by Bret Baier of Fox News on May 1 to “name one thing that would help you

deport more illegal immigrants that Congress could do,” Mayorkas replied, “What we are talking about when we talk about legislation is building the orderly legal pathways for people to obtain relief under our laws.” In other words: Mayorkas openly wants to let everyone in.

Mayorkas appears to have little respect for existing laws. A federal statute provides that aliens who do not have a legal right to be present in the U.S. “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” *There is no authority to release illegal aliens into the U.S.* If there is no space to detain them, the federal government should close the border to them. There is currently space to detain fewer than 34,000 aliens, while federal agents are encountering more than five times that number every month. Yet the Department of Homeland Security has actually proposed to cut detention space in the future.²²

In a hopeful development, a federal judge in May denied the Department of Homeland Security’s request to dismiss a lawsuit brought by Florida Attorney General Ashley Moody. The judge strongly signaled his agreement with Florida’s argument that the Biden administration’s policy of mass release of illegal aliens into the U.S. violates the federal statute quoted above.²³

Will this administration act to control our borders? Evidently not without more pressure from the American people. It appears that only the specter or the reality of political catastrophe will motivate this administration to reverse its lawless policies. U.S. borders need to be a higher concern than Ukraine’s borders. If the Biden administration can spend billions on protecting Ukrainian borders that have been crossed by an invading force, it is not too much to ask the same administration to protect American borders from an invasion.

¹ <https://www.pewresearch.org/fact-tank/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/>; <https://americafirstpolicy.com/latest/the-deliberate-plan-behind-the-border-crisis/>; <https://www.washingtontimes.com/news/2022/mar/29/illegal-immigrant-population-soars-to-114-million/>. The total number of illegal immigrants is admittedly hard to pin down because the U.S. government does not directly track it.

² Bob Price and Randy Clark, “201k Migrant Apprehensions Sets All-Time Record for April Arrests at Border,” *Breitbart.com*, May 2, 2022; Randy Clark, “364k Migrant Got-Aways Already Recorded in FY 2022,” *Breitbart.com*, May 2, 2022.

³ Andrew C. McCarthy, “With Biden Reckless and Congress AWOL, Will the Supreme Court Save ‘Remain in Mexico’? Don’t Count on It,” *National Review.com*, April 30, 2022.

⁴ Bob Price and Randy Clark, *op. cit.* at n. 2.

⁵ <https://www.nytimes.com/2021/01/23/opinion/sunday/immigration-reform-biden.html>.

⁶ Byron York, *Washington Examiner*, March 31, 2022, <https://www.washingtonexaminer.com/opinion/the-border-no-imaginable-scenario-to-avoid-another-disaster>.

⁷ <https://www.pewresearch.org/fact-tank/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/>; also, <https://americafirstpolicy.com/latest/the-deliberate-plan-behind-the-border-crisis/>.

⁸ <https://www.washingtontimes.com/news/2022/apr/1/new-rnc-video-series-shines-light-bidens-border-cr/>.

⁹ <https://nypost.com/2021/03/22/us-mexico-border-traffickers-earned-as-much-as-1>.

¹⁰ <https://nypost.com/2021/04/17/how-bidens-border-policy-will-increase-child-sex-trafficking-to-us/>.

¹¹ <https://www.dea.gov/press-releases/2022/04/06/dea-warns-increase-mass-overdose-events-involving-deadly-fentanyl>.

¹² <https://opustreatment.com/substance-abuse/drug-trafficking-in-the-united-states/>.

¹³ <https://www.dailymail.co.uk/news/article-10728677/Border-Patrol-intercepted-23-people-terror-watchlist-2021.html>.

¹⁴ *Ibid.* Also, <https://republicans-homeland.house.gov/katko-comer-blast-dhs-for-hiding-information-about-terrorists-apprehended-at-the-border/>; <https://www.dailymail.co.uk/news/article-10728677/Border-Patrol-intercepted-23-people-terror-watchlist-2021.html>; and <https://republicans-oversight.house.gov/wp-content/uploads/2022/03/Letter-to-Secretary-Mayorkas-re-Terrorist-Entry-03-22-2022.pdf>.

¹⁵ <https://nypost.com/2021/03/17/dhs-boss-downplays-terror-suspects-crossing-us-mexico-border/>.

¹⁶ <https://www.washingtonexaminer.com/news/border-patrol-chief-suspected-terrorists-coming-across-southern-border>; <https://townhall.com/tipsheet/juliorosas/2022/04/28/dhs-secretary-doesnt-know-terror-suspects-caught-border-n2606487>.

¹⁷ <https://nypost.com/2021/08/17/terrorists-a-real-threat-to-enter-us-through-southern-border-rodney-scott-says/>.

¹⁸ <https://www.washingtonexaminer.com/opinion/op-eds/taliban-released-terrorists-could-be-sneaking-through-the-us-southern-border>.

¹⁹ <https://thehill.com/blogs/congress-blog/politics/599738-safe-sponsor-act-will-close-border-loopholes-fight-human/>.

²⁰ E.g., Zolan Kanno Youngs, Jonathan Martin and Alexander Burns, “Biden Received Early Warnings That Immigration and Inflation Could Erode His Support,” *New York Times*, May 1, 2022; Kimberley A. Strassel, “Democrats Are Lost at the Border,” *Wall Street Journal*, April 28, 2022.

²¹ John Solomon, “‘Alien always wins rule,’” *justthenews.com*, May 22, 2022.

²² Andrew C. McCarthy, *op. cit.* at n. 3.

²³ John Binder, “Trump-Appointed Judge Refuses to Dismiss Lawsuit Against Mass Release of Illegal Aliens into U.S.,” *Breitbart.com*, May 6, 2022.

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