

JULY 20, 2021



PRESIDENT BIDEN'S BORDER CRISIS AT SIX MONTHS

**A SECURITY, HUMANITARIAN, AND
PUBLIC HEALTH CRISIS**

STAFF REPORT

HOUSE COMMITTEE ON OVERSIGHT & REFORM | MINORITY

HOUSE COMMITTEE ON THE JUDICIARY | MINORITY

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KEY TAKEAWAYS

This report chronicles how actions taken by the Biden Administration in its first six months have precipitated a massive immigration crisis and how Democrats have ignored repeated warnings from Republicans to the detriment of our safety, health, and the rule of law. After bold steps taken by President Trump stemmed the flow of illegal migrants coming to the United States, the Biden Administration has not only reversed course on measures seeking to stop the influx of border crossings but has instituted permissive policies and incentivized immigration through non-legal channels. While this crisis rages on in real time, Democrats have no plan — and apparently no intention — of acting to stop the Biden border crisis.

- President Biden’s policies created a security, humanitarian, and public health crisis on the southwest border.
- Migrants have repeatedly told the media that the reason they are coming to the U.S. is due to their perception that the Biden Administration will let them into the country.
- President Biden rescinded multiple Trump Administration policies that were controlling the flow of migrants on the southwest border—with no plan to replace them.
- Although the D.C. Circuit Court of Appeals stayed an injunction against expelling unaccompanied alien children (UAC) on January 29, 2021, the Biden Administration did not resume repatriating UACs pursuant to Title 42 authority, which led to a significant surge of UACs.
- President Biden halted construction of the border wall system despite a December 2020 congressional appropriation of \$1.375 billion for wall construction.
- U.S. Immigration and Customs Enforcement (ICE) book-in arrests¹ immediately plummeted after President Biden took office by 62% from January 2021 (5,119) to February 2021 (1,970), indicating that interior enforcement efforts were dramatically curtailed.
- Border Patrol agents are so overwhelmed caring for those aliens already in custody that an estimated 1,000 people per day are successfully crossing the border undetected, and without COVID-19 testing, or processing for Immigration Court.
- The Biden Department of Homeland Security’s (DHS) strategy of simply relying on non-governmental organizations (NGOs) to conduct testing and provide quarantine space *after* release is entirely inadequate, as migrants who test positive for COVID-19 can simply

¹ Meaning book-ins of individuals into ICE custody who were arrested in the interior of the U.S. by an ICE officer.

choose to leave for the interior of the country before the quarantine period is finished.

- The emergency measures made necessary by the Biden Administration’s reversal of illegal immigration deterrent policies have been an expensive endeavor, diverting millions of taxpayer funds from other necessary projects.
- While Congressional Republicans have attempted serious oversight of the Biden Administration’s immigration policies, Democrats have been silent and ignored multiple Republican requests to address the crisis.
- Democrats are in denial about the crisis on the border and its root causes, and instead, have actively opposed Republican legislative solutions, including fixing the Flores settlement loophole, reforming the Trafficking Victims Protection Reauthorization Act, and strengthening the asylum system to prevent fraud and abuse.

BIDEN BORDER CRISIS TIMELINE

Actions taken to erode immigration enforcement and border security and Republicans' response

January 20, 2021

On his first day in office, President Biden issued an executive order, “[Revision of Civil Immigration Enforcement Policies and Priorities](#)” (“priorities memorandum”), revoking an executive order that President Trump signed to protect Americans from dangerous criminal aliens, “[Enhancing Public Safety in the Interior of the United States](#).” President Trump’s order called for the faithful execution of the immigration laws against all removable illegal aliens. It instructed the Department of Homeland Security (DHS) to prioritize the removal of such aliens who have committed crimes, pose a national security risk, engaged in fraud or willful misrepresentation before the government, abused welfare programs, or are subject to a final order of removal. It also instructed the Attorney General to ensure sanctuary jurisdictions are not eligible to receive federal grants.

President Biden issued a [proclamation](#) terminating the national emergency declaration at the Southern border declared by President Trump and halting construction of the border wall.

DHS issued a [memorandum](#) freezing all immigration removal actions for 100 days unless the removal concerns an alien who was suspected of terrorism or espionage or otherwise posed a national security threat, the alien was not physically present in the United States before November 1, 2020, the alien agreed to waive any right to remain in the United States, or ICE made an individualized determination that the removal is required by law.

President Biden issued a presidential memorandum, “[Preserving and Fortifying Deferred Action for Childhood Arrivals \(DACA\)](#),” instructing the Secretary of Homeland Security and Attorney General to take actions that “preserve and fortify” DACA.

President Biden announced his first [legislative proposal, which](#) would grant amnesty to millions of illegal aliens in the U.S. This is widely reported in the news media.

DHS [issued](#) a press release announcing the suspension of new enrollments in the Migrant Protection Protocols (MPP). MPP required many aliens encountered by Customs and Border Protection (CBP) to wait in Mexico during their U.S. immigration court proceedings instead of being released into the interior of the U.S.

February 2, 2021

President Biden issued an [executive order](#) instructing the Secretary of Homeland Security to rescind MPP. In addition, the order directed the Attorney General and Secretary of Homeland Security to rescind a series of rules issued by the Trump Administration that implemented

asylum agreements with Guatemala, El Salvador, and Honduras. The order also rescinded President Trump’s [memorandum](#) seeking to end “catch and release.”

President Biden issued another [executive order](#) directing the Attorney General and DHS Secretary to identify and rescind barriers impeding access to immigration benefits or the naturalization process. This review specifically considered President Trump’s public charge rule, which sought to prevent aliens who are likely to receive one or more public benefits from obtaining green cards.

DHS released a statement, “[Equal Access to COVID-19 Vaccines and Vaccine Distribution Sites](#),” which called for equal access to the COVID vaccine for illegal aliens, and encouraged all individuals, regardless of immigration status, to receive the COVID vaccine.

February 4, 2021

President Biden issued an [executive order](#) rescinding Trump Administration reforms to the U.S. Refugee Admissions Program. The order rescinded multiple directives signed by President Trump providing for enhanced vetting of refugees and giving state and local governments a say in the refugee resettlement process. In addition, the order directed the DHS Secretary, Secretary of State, and the Attorney General to expand refugee adjudication capacity.

House Committee on Oversight and Reform Republicans [sent a letter to DHS Secretary Mayorkas](#) requesting all documents and communications related to President Joe Biden’s unilateral decision to halt construction of the southern border wall. DHS has not responded.

February 11, 2021

DHS [announced](#) that beginning on February 19, it will begin processing approximately 25,000 individuals who were enrolled in MPP for entry into the United States.

February 17, 2021

House Committees on Oversight and Reform and Judiciary Republicans [sent a letter to Acting ICE Director Johnson](#) requesting any final guidance relating to the implementation of the January 20th priorities memorandum; all documents related to how ICE plans to prevent recidivism by removeable aliens in the U.S. who have been arrested, but are not considered deportation priorities; and all statistics regarding the number of aliens deemed removable from the U.S. encountered by ICE since 2017 who have gang tattoos or who have been identified as a member of or an affiliate of a criminal gang. ICE has not responded.

February 18, 2021

ICE issued a [memorandum](#) reiterating the January 20th DHS priorities memorandum that limited the ability of ICE to enforce the law. Under the memorandum, unless an illegal immigrant is a national security threat, was not physically present in the United States before November 1, 2020, or has been convicted of an aggravate felony and released after January 20, 2021, an ICE

officer must stand down or must seek pre-approval of any enforcement action before it can be carried out.

This policy greatly curtails interior immigration enforcement capabilities, including for aliens who have committed serious criminal offenses. ICE interior enforcement book-ins to custody [fell 62%](#) from January to February.

February 19, 2021

DHS announced 25 individuals previously enrolled in MPP were processed at the San Ysidro Port of Entry and released into the United States. This group is the first of thousands of MPP-enrolled individuals who will be permitted to enter the United States instead of waiting in Mexico for adjudication of their claims.

House Committee on Oversight and Reform Republicans [sent a letter to DHS Secretary Mayorkas](#) on the impending health crisis at the border and the Biden Administration's plan to mitigate President Biden's border crisis. The Republicans requested the Biden Administration's plan to reduce illegal border crossings by UACs and family units, prevent the spread of COVID-19 in facilities along the southern border, increase bedspace capacity at Family Residential Centers to ensure family units are held in custody, expedite immigration proceedings for UACs and family units that cross the border illegally, and address the crisis with the Mexican government. DHS has not responded.

February 22, 2021

The Biden Administration [reopened](#) a temporary influx shelter for UACs in Carrizo Springs, Texas to permit Health and Human Services (HHS) to accommodate increasing numbers of arrivals. The soft-sided facility had been closed since July 2019.

March 4, 2021

House Committee on Oversight and Reform Republicans [sent a letter to Chairwoman Maloney requesting](#) the Committee hold a hearing to examine the current crisis occurring on the southern border. Chairwoman Maloney has not responded.

House Judiciary Subcommittee on Immigration and Citizenship Republicans sent a [letter](#) to Chairwoman Lofgren requesting that the Subcommittee hold a hearing to examine the Biden Administration's response to the sharp rise in the number of UACs arriving at the U.S. southern border. Chairwoman Lofgren has not responded.

March 9, 2021

DHS [announced](#) the government will no longer defend the public charge rule issued under President Trump. The Supreme Court granted the Biden Administration's request to dismiss a case challenging the legality of the rule. The Trump Administration's public charge rule sought

to provide clarity for implementation of the public charge ground of inadmissibility in order to prevent aliens who were likely to receive one or more public benefits from getting green cards.

March 10, 2021

House Committee on Oversight and Reform Republicans [sent a letter to DHS Secretary Mayorkas](#) renewing their request for the administration's plan to mitigate President Biden's border crisis. DHS has not responded.

CBP issued its February 2021 operational update, showing it encountered over 100,000 illegal aliens attempting to enter at the southwest border, a 28% increase over January 2021. Over 9,400 UACs were encountered in February by CBP, a 61% increase over January.

March 12, 2021

House Judiciary Subcommittee on Immigration and Citizenship Ranking Member Tom McClintock sent a follow-up letter to Chairwoman Lofgren requesting that the Subcommittee hold a hearing to examine the Biden border crisis in light of increasing numbers of illegal border crossers. Chairwoman Lofgren has not responded.

March 13, 2021

DHS [announced](#) it will deploy FEMA to the southwest border to help care for the surge of UACs arriving at the border.

March 14, 2021

A CBP facility in Donna, Texas holding UACs reached [729% capacity](#).

March 15, 2021

HHS [announced](#) it has opened an emergency influx shelter in Midland, Texas to accommodate increasing numbers of UACs arriving on the border and to begin to reduce the numbers of UACs backed up into CBP custody. More than 4,000 children are currently in CBP custody awaiting transfer into HHS facilities.

March 16, 2021

HHS announced it will open an emergency influx shelter at the Dallas Convention Center to accommodate approximately 2,000 UACs.

DHS Secretary Mayorkas [announced](#), "we are on pace to encounter more individuals on the southwest border than we have in the last 20 years."

March 18, 2021

House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security Republicans sent a [letter](#) to Chairwoman Jackson-Lee requesting that the Subcommittee hold a hearing to examine how the Biden Administration’s border crisis affects homeland security and public safety. Chairwoman Jackson-Lee has not responded.

March 20, 2021

HHS announced it will open an Influx Care Facility in Pecos, Texas with a potential capacity of 2,000 beds for UACs.

March 22, 2021

ICE [announced](#) an \$86.9 million contract with Family Endeavors, Inc. to provide an additional 1,239 beds in hotel rooms along the border for family units being transferred from CBP custody to speed up the ability to quickly process and release those family units into the interior of the U.S.

March 23, 2021

HHS announced it will add a second Influx Care Facility in Carrizo Springs, Texas to house up to 500 UACs.

March 24, 2021

The White House [announced](#) that Vice President Kamala Harris will oversee the Administration’s efforts to “address the root causes” of the border crisis with officials from Mexico and Northern Triangle countries.

HHS announced that it will open an Emergency Intake Site at the San Diego Convention Center with capacity of 1,400 beds for UACs.

March 25, 2021

HHS announced that it will open an Emergency Intake Site at the Freeman Expo Center in San Antonio, Texas for up to 2,400 UACs.

HHS also announced that it will open an Emergency Intake Site at Fort Bliss near El Paso, Texas for up to 5,000 UACs, and will open a facility at Joint Base San Antonio Lackland with capacity for up to 350 UACs.

House Committee on Oversight and Reform Republicans [renewed their request to Chairwoman Carolyn Maloney](#) for a hearing on the crisis at the border. The Republican lawmakers called out the Democrats’ hypocrisy on this issue, noting they held several hearings and conducted site

visits at border facilities during the previous administration, and urged Chairwoman Maloney to conduct oversight of the Biden Administration's response to the escalating crisis.

March 26, 2021

HHS [announced](#) that although staff and volunteers caring for UACs must pass public record criminal background checks, they would be waiving fingerprint-based FBI background checks to more quickly staff emergency intake facilities for UACs.

DHS Secretary Mayorkas [dismissed](#) all 32 members of the Homeland Security Advisory Council except for the Chair and Vice Chair. These members had been appointed to that role by both Democratic and Republican administrations and had advised the Secretary on issues including care of families and children in CBP custody.

March 30, 2021

House Committee on the Judiciary Ranking Member Jordan and Subcommittee on Immigration and Citizenship Ranking Member McClintock sent a [letter](#) to DHS Secretary Mayorkas requesting all documents and communications between the Biden transition team and DHS in response to reports that the Biden transition team had been warned by DHS that rescinding certain Trump immigration policies would result in a surge of illegal immigration to the southern border. To date, the Biden Administration has not provided the requested information.

March 31, 2021

HHS announced that it is opening an Emergency Intake Site for UACs at the National Association of Christian Churches site in Houston, Texas.

DHS Secretary Mayorkas [acknowledged](#) that smugglers are abusing and exploiting the children on the dangerous journey to the U.S.

April 2, 2021

CBP [announced](#) the opening of a 90,000 square foot soft-sided facility in Eagle Pass, Texas to more quickly process individuals apprehended by U.S. Border Patrol in the Del Rio Sector.

April 5, 2021

House Committee on the Judiciary Ranking Member Jordan led a delegation of Committee Republicans to McAllen, Texas to see the Biden border crisis firsthand, to meet with front-line law enforcement officials, and to meet with members of the community who are negatively affected by the crisis.

April 8, 2021

CBP [issued](#) its March 2021 operational update, showing it encountered over 172,000 illegal aliens attempting to enter at the southwest border, a 71% increase over February 2021. Nearly 18,900 UACs were encountered in March by CBP, a 100% increase over February. Over 53,600 family units were encountered in March by CBP, an increase of nearly 180% over February.

April 11, 2021

HHS opened an Emergency Intake Site for UACs at the Starr Commonwealth campus in Albion, Michigan, with the potential capacity of 240 beds.

April 12, 2021

House Committee on Oversight and Reform Ranking Member James Comer and Rep. Yvette Herrell [led a delegation](#) of Republicans to El Paso, Texas and New Mexico to witness firsthand the humanitarian and national security crisis unfolding at the U.S.-Mexico border as a result of President Biden's open borders policies.

President Biden nominated Chris Magnus to head CBP. Mr. Magnus opposes deterrence-focused immigration policies.

April 14, 2021

The media [reported](#) the Biden Administration awarded a massive, sole source contract to Family Endeavors, Inc to help manage the surge of UACs. The questionable contract was awarded to the nonprofit after a member of the Biden-Harris transition team started working there, and it amounts to more than 12 times the annual budget of the nonprofit.

April 15, 2021

House Committee on the Judiciary Ranking Member Jordan sent a [letter](#) to Chairman Nadler requesting that he invite DHS Secretary Mayorkas to testify in front of the Committee regarding the Biden border crisis. Chairman Nadler has not responded.

April 17, 2021

HHS [closed](#) a facility housing female UACs at the National Association of Christian Churches, Houston, TX Emergency Intake Site due to poor conditions.

April 19, 2021

ICE and CBP issued [memos](#) instructing immigration enforcement officials to use new terminology to describe immigrants, including by prohibiting use of the term "alien," a term used throughout the immigration laws.

Oversight Republicans [renewed their request to DHS Secretary Mayorkas](#) for information regarding the pause in construction of the border wall and the Administration’s plan to address the escalating crisis on the southwest border. To date, the Administration has not provided the requested information.

April 21, 2021

Ranking Member James Comer and House Committee on Homeland Security Ranking Member John Katko, along with Republicans on the House Oversight and Reform and House Homeland Security Committees, [wrote](#) to HHS Secretary Xavier Becerra regarding a “massive, sole source contract” DHS awarded to Family Endeavors, Inc. to help manage the surge of unaccompanied minors at the border.

Subcommittee on Government Operations Ranking Member Jody Hice [wrote](#) to U.S. Office of Personnel Management (OPM) Acting Director Kathleen McGettigan regarding the deployment of volunteer federal employees to assist the DHS and HHS in caring for UACs coming to the southern border as a result of the Biden Border Crisis and requests information about it is having on the federal workforce.

April 23, 2021

ICE rescinded guidance on collecting statutory civil financial penalties from aliens who fail to comply with lawful removal orders.

April 26, 2021

Vice President Kamala Harris [announced](#) \$310 million in additional humanitarian aid to Northern Triangle countries to address “root causes” of migration without any consideration of how Biden’s policies are driving the current crisis.

Subcommittee on Government Operations Ranking Member Jody Hice [wrote](#) CBP Senior Official Performing the Duties of the Commissioner, Troy Miller, regarding the negative impact the Biden Border Crisis is having on Border Patrol agents.

April 27, 2021

DHS announced new guidance to limit ICE and CBP civil enforcement actions in or near courthouses. With this announcement, the Biden Administration removed a tool that ICE had used to apprehend criminal aliens in sanctuary jurisdictions.

President Biden nominated Sheriff Ed Gonzalez, who opposes deterrence policies and supports sanctuary policies, to serve as ICE director.

May 1, 2021

HHS opened an Emergency Intake Site for UACs at the Pomona Fairplex Emergency Intake Site in Pomona, California, with the potential capacity of 2,500 beds.

May 11, 2021

CBP [released](#) operational statistics for April 2021. CBP encountered 178,622 aliens, 17,171 UACs, and 50,016 family units attempting entry along the southwest Border.

May 13, 2021

Oversight and Reform Committee Ranking Member James Comer, Judiciary Committee Ranking Member Jim Jordan, and Subcommittee on Immigration and Citizens Ranking Member Tom McClintock sent letters to [ICE](#), [HHS](#), and [Endeavors](#) regarding no-bid contracts awarded to a nonprofit linked to the Biden-Harris transition team.

May 24, 2021

Oversight and Reform Committee Ranking Member James Comer applauded the Department of Homeland Security Office of the Inspector General for [launching](#) an investigation into a \$87 million no-bid contract awarded to Endeavors Inc. to house migrant families.

May 25, 2021

Oversight and Reform Committee Ranking Member James Comer, Judiciary Committee Ranking Member Jim Jordan, and Homeland Security Committee Ranking Member John Katko [wrote to](#) DHS Secretary Mayorkas calling on the Department to disclose its criteria for granting exemptions under Title 42 authority.

June 1, 2021

DHS Secretary Mayorkas formally terminated MPP in a [memorandum](#).

June 2, 2021

Oversight Republicans called on Chairwoman Maloney for a [third time](#) to hold a hearing on the Biden border crisis.

June 9, 2021

CBP [issued](#) its May 2021 operational update, showing it encountered 180,034 illegal immigrants.

June 23, 2021

The Biden Administration [forced out](#) the head of the U.S. Border Patrol, Rodney Scott.

June 25, 2021

Vice President Harris finally visited the southwest border, only after President Trump announced he planned to visit the border.

July 1, 2021

House Committee on the Judiciary Ranking Member Jordan sent a [letter](#) to DHS Secretary Mayorkas requesting that he make himself available to testify in front of the Judiciary Committee regarding the Biden border crisis. To date, Secretary Mayorkas has not responded.

July 16, 2021

CBP [released](#) operational statistics for June, 2021. CBP encountered 188,829 aliens, which is the highest monthly total in 21 years. This includes 15,253 UACs, and 55,805 family units attempting entry along the southwest border. June is the fourth month in a row of over 170,000 apprehensions.

EXECUTIVE SUMMARY

Immediately upon assuming office on January 20, 2021, President Biden issued a series of executive orders and agency actions to unwind the Trump Administration’s successful immigration policies on the border and in the interior. These actions, which included the halting of border barrier construction, signaled to the world that the Biden Administration would not effectively enforce U.S. immigration laws. The resulting surge of migrants on the southwest border has overwhelmed border infrastructure and personnel, leading to a security, public health, and humanitarian crisis. The resulting chaos has benefitted smugglers and cartels, while incentivizing illegal activity that puts certain vulnerable migrants—including UACs—at risk.

Instead of re-implementing Trump Administration policies or providing a plan to address the border crisis, the Biden Administration initially refused to acknowledge the crisis it created. Instead, it oscillated between excuses, blaming the rising numbers of migrants overwhelming border facilities as a “seasonal” aberration, referring to it as a mere “challenge,” or blaming it on climate change. Members of the Biden Administration went so far as to blame the Trump Administration for the crisis rather than accept responsibility and take appropriate action. In the absence of any real leadership on the issue, the crisis continues unabated as the number of migrants coming and the costs for emergency response measures continue to rise.

The Biden Administration’s border policies have created a security, public health, and humanitarian crisis. Overwhelming numbers of aliens arriving illegally at the southwest border—especially increasing numbers of family units and unaccompanied alien children—have quickly caused several negative effects to American health, safety, and security.

First, as large groups of family units and migrant children crossed the border, cartels and smugglers have taken advantage of the lawlessness to bring contraband and higher value criminal aliens without detection into the U.S. Estimates are that—in addition to the thousands of migrants apprehended by border patrol every day—over a thousand aliens per day are entering the country without being apprehended, continuing their journey into the interior of the country without any background checks or health screenings.

Second, as border facilities have been overwhelmed, border officials are forced to return to catch-and-release policies for many family units, many of whom were released into the interior of the country even after testing positive for COVID-19. Although DHS emphasizes that it released COVID-19-positive aliens to NGOs to quarantine, nothing prevented those aliens from leaving quarantine and continuing to the interior of the country, which many did. At one point, ICE estimated that 16% of aliens coming into their custody after being apprehended by CBP were testing positive for COVID-19.

Third, the Biden Administration’s border policies created incentives for illegal immigration, which buttressed the cartels’ business prospects. The cartels continue to control the smuggling routes along the border, allowing them to make money off vulnerable migrants, including increasing numbers of UACs. Border Patrol officials have reported an increasing number of rescues of migrants who have been left in dangerous situations by their smugglers. In

some cases, very young children were left in perilous situations. Meanwhile, the numbers of individuals evading apprehension entirely have risen, while the specter of aliens infiltrating the country who are national security threats, including terrorists, is a real possibility, with CBP having apprehended at least two individuals on a terrorist watchlist. CBP also routinely encounters sex offenders, including individuals who have been previously deported after a conviction for sex offenses against children.

Finally, the dramatic influx of migrants has forced the federal government to spend hundreds of millions in emergency measures, including by DHS and HHS. Millions of taxpayer dollars are being diverted from their intended purposes to provide emergency services in response to the migrant crisis.

Reversing the Trump Administration's deterrent-focused policies without a plan to replace those policies has fueled the border crisis and rapidly increased illegal border crossings. The Biden Administration's policies and haphazard responses have eroded what little deterrents now exist, which will lead to long-term high levels of illegal immigration to the United States and increasingly higher costs to U.S. taxpayers.

INTRODUCTION

Beginning on his first day in office, President Biden issued a series of executive orders, rescinding successful Trump Administration policies and signaling to the world the southwest border is open and illegal immigration will have little, if any, consequence.² President Biden had no plan to replace these deterrent focused policies with anything substantive to control the flow of migrants on the southwest border.

A. Undoing successful Trump policies from Day 1

One of President Biden's first acts in office was gutting interior enforcement against illegal aliens and issuing a 100-day moratorium on deportations for anyone present in the U.S. prior to November 1, 2020, absent limited exceptions.³ Although a Federal Court later enjoined that prohibition,⁴ other actions by the Biden Administration gutted interior enforcement. ICE book-in arrests immediately plummeted after President Biden took office, by 62% from January 2021 (5,119) to February 2021 (1,970).⁵

President Biden also ended enrollments in the MPP program, which required inadmissible aliens to wait in Mexico instead being released into the U.S. while awaiting immigration court proceedings.⁶ Instead, President Biden reopened the border to 25,000 MPP enrollees and began their phased-in reentry.⁷ He also issued a proclamation⁸ stopping construction of the border wall system, even though Congress appropriated \$1.375 billion for wall construction in December 2020.⁹

² See Bedard, Paul, List: 27 steps to worst border crisis in 20 years, WASH. EXAMINER (Mar. 19, 2021), available at <https://www.washingtonexaminer.com/washington-secrets/list-27-steps-to-worst-border-crisis-in-20-years>.

³ Memorandum from Acting Secretary David Pekoske to Troy Miller, et. al., *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Jan. 20, 2021), available at https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf

⁴ *Texas v. United States*, No. 6:21-cv-00003 (S.D. Tex. Mar. 23, 2021) (order granting preliminary injunction), available at <https://www.aila.org/File/Related/21012634b.pdf>.

⁵ Immigrant Detention Numbers Fall under Biden, but Border Book-ins Rise, TRAC Immigration, Syracuse University, available at <https://trac.syr.edu/immigration/reports/640/>.

⁶ DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program (Jan. 20, 2021), available at <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program>.

⁷ Press Release, *DHS Announces Process to Address Individuals in Mexico with Active MPP Cases* (Feb. 11, 2021), available at <https://www.dhs.gov/news/2021/02/11/dhs-announces-process-address-individuals-mexico-active-mpp-cases>.

⁸ Proclamation by the President, *Emergency With Respect to the Southern Border of the United States And Redirection of Funds Diverted to Border Wall Construction*, Jan. 20, 2021, available at www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/

⁹ See Consolidated Appropriations Act, 2021, Public Law No. 116-260, p. 275-76, Dec. 27, 2020, available at <https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf> (“... An amount equal to the amount made available in section 209(a)(1) of division D of the Consolidated Appropriations Act, 2020...”); see also Consolidated Appropriations Act, 2020, Public Law No: 116-93, Div. D, Sec. 209(a)(1), Dec. 16, 2019, available at <https://www.congress.gov/116/plaws/publ93/PLAW-116publ93.pdf>. (“\$1,375,000,000 for the construction of barrier system along the southwest border...”).

Even more indicative of the Biden Administration’s far-left approach to immigration, President Biden’s first legislative proposal to Congress sought to provide amnesty to millions of illegal aliens without addressing the loopholes fueling the border crisis.¹⁰ This proposal sends the message to the world that our immigration laws can be violated without consequence, and will only encourage more to come here illegally.

As a result of these disastrous policies, DHS Secretary Alejandro Mayorkas was forced to admit by mid-March that “we are on pace to encounter more individuals on the southwest border than we have in the last 20 years.”¹¹ Despite the clear security and public health crisis on the border, the Biden Administration refused to call the situation a “crisis,”¹² preferring the terminology “challenge,” even as the mainstream media outlets raised the alarm.¹³

Migrants and smugglers understood the impact of these policies, even if their interpretations were somewhat inaccurate. For example, one migrant said: “Biden promised us that everything was going to change He hasn’t done it yet, but he is going to be a good president for migrants.”¹⁴ Another said: “My friends have told me that with the new president, it will be easier to enter the U.S.”¹⁵ Other migrants said, “I heard news they are letting children in,”¹⁶ and, “We went because we heard the news that there were 100 days of free passage!”¹⁷ Migrant statements emphasized the particular vulnerability of children, with one saying, “Biden promised that we can cross with minors,”¹⁸ and another saying, “If a father goes with his son,

¹⁰ Fact Sheet: *President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System*, The White House (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>.

¹¹ *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border*, Dep’t of Homeland Security (Mar. 16, 2021), available at <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.

¹² White House Briefing Room, *Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas* (Mar. 1, 2021) available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/01/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas/>. (“Q: Thank you, Mr. Secretary. Do you believe that right now there is a crisis at the border? SECRETARY MAYORKAS: I think that the – the answer is no. I think there is a challenge at the border that we are managing, and we have our resources dedicated to managing it.”).

¹³ See Parker, Ashley, et. al., ‘No end in sight’: Inside the Biden administration’s failure to contain the border surge, WASH. POST. (Mar. 20, 2021), available at https://www.washingtonpost.com/politics/biden-border-surge/2021/03/20/21824e94-8818-11eb-8a8b-5cf82c3dffe4_story.html.

¹⁴ Nelson, Steven, *Migrants deported from US back to Mexico say Biden didn’t keep promise*, N.Y. POST (Mar. 15, 2021), available at <https://nypost.com/2021/03/15/migrants-cry-foul-after-us-deports-them-at-mexican-border/>.

¹⁵ Montes, Juan, *Young Central American Migrants see Biden Era as Chance to Enter U.S.*, THE WALL STREET JOURNAL (Mar. 9, 2021), available at <https://www.wsj.com/articles/young-central-american-migrants-see-biden-era-as-chance-to-enter-u-s-11615298419>.

¹⁶ Gottesdiener, Laura, *Biden tells migrants to stay put. Central Americans hear a different message*, REUTERS (Mar. 31, 2021), available at <https://www.reuters.com/article/us-usa-immigration-messaging-insight-idUSKBN2BN1BB>.

¹⁷ *Id.*

¹⁸ ‘This Week’ Transcript 3-21-21: *Homeland Security Secretary Alejandro Mayorkas et. al.*, ABC NEWS (Mar. 21, 2021), available at <https://abcnews.go.com/Politics/week-transcript-21-21-homeland-security-secretary-alejandro/story?id=76588952>.

they aren't going to give him asylum, but if a child goes alone he will win his case because he is travelling alone."¹⁹

B. "Root Causes" as a smokescreen for incompetence

Instead of focusing on deterrent policies and enforcing current law, the Biden Administration has attempted to shift the narrative to a "root causes" approach, blaming everything from President Trump to climate change for the current border crisis.²⁰ As part of this approach, the Biden Administration has proposed simply sending money to Central American countries in order to stem the flow of unauthorized migrants into the United States. Meanwhile, the numbers of people from countries other than Mexico and Central America continue to rise: 33,150 such migrants were encountered in April alone.²¹

President Biden's FY 2022 discretionary budget request includes \$861 million in financial assistance to Central America "to address the root causes of irregular migration from Central America to the United States . . ."²² That request—which is much higher than current levels of around half a billion dollars—is couched as "a first step toward a four-year commitment of \$4 billion" for the region.²³ Unlike the Trump Administration, which leveraged the use of aid to secure cooperation from Northern Triangle countries on migration issues,²⁴ the Biden Administration has announced this "commitment" with no strings attached.

The true "root causes" of the current border crisis are the Biden Administration's reckless rhetoric and policies, which quickly and haphazardly rolled back successful deterrent policies implemented by President Trump. Sending additional taxpayer money to Central American countries as a solution to the border crisis does not address the underlying issues fueling the crisis. Moreover, the countries identified as potential recipients include some of the most corrupt countries in the world, with El Salvador and Guatemala ranking in the top ten.²⁵ This raises

¹⁹ Green, Emily, *Human Smugglers Couldn't Care Less About Kamala Harris' 'Do Not Come' Message*, VICE NEWS (Jun. 9, 2021), available at <https://www.vice.com/en/article/z3x3n4/human-smugglers-couldnt-care-less-about-kamala-harris-do-not-come-message>.

²⁰ Korte, Cara, *Joe Biden said climate change has impacted the southern border crisis. But Central American countries haven't been invited to the White House climate summit*, CBS NEWS (Apr. 19, 2021), available at <https://www.cbsnews.com/news/joe-biden-climate-change-southern-border-crisis-central-america-white-house-climate-summit/>.

²¹ Kight, Stef W, *Distant migrants now targeting U.S.- Mexico border*, AXIOS NEWS (May 27, 2021), available at https://www.axios.com/us-border-immigration-mexico-northern-triangle-5a263f5e-eeef-4e8f-9d8e-6a9dd70ed7dd.html?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiossneakpeek&str_eam=top.

²² President's request for fiscal year 2022 discretionary funding, Executive Office of the President, Office of Management and Budget (Apr. 9, 2021), pg. 13, available at <https://www.whitehouse.gov/wp-content/uploads/2021/04/FY2022-Discretionary-Request.pdf>.

²³ *Id.* at pg. 26.

²⁴ Finnegan, Conor & Quinn Owen, *Trump admin resumes some aid to Central America in exchange for asylum cooperation*, ABC NEWS (Oct. 18, 2019), available at <https://abcnews.go.com/Politics/trump-admin-resumes-aid-central-america-exchange-asylum/story?id=66366902>.

²⁵ Alas, Horus, *The 10 Most Corrupt Countries, Ranked by Perception*, U.S. NEWS & WORLD REPORT (Apr. 13, 2021), available at <https://www.usnews.com/news/best-countries/articles/10-most-corrupt-countries-ranked-by-perception>.

further concerns that U.S. taxpayer-funded aid would simply be wasted on corrupt politicians and organizations serving their own interests, and not those of the interests of the American people.

THE BORDER CRISIS

The numbers tell a stark story. In February 2021, CBP encountered over 100,000 illegal aliens at the southwest border, a 174% increase since February 2020 (36,687).²⁶ In March, CBP encountered over 170,000 illegal aliens, the highest monthly total in 15 years and an increase of nearly 400% compared to March 2020 (34,460).²⁷ In April, CBP encountered over 178,000 illegal aliens, a twenty year record and a 944% increase compared to April 2020 (17,106).²⁸ In May, CBP encountered over 180,000 illegal aliens, a 675% increase compared to May 2020 (23,237).²⁹ In June, CBP encountered over 188,000 illegal aliens, a 471% increase compared to June 2020 (33,049).³⁰

Within those numbers, the numbers of UACs and family units increased substantially compared to the prior year. In April 2021, 50,016 family units were encountered, a 6,677% increase compared to 738 family unit encounters in April 2020.³¹ In the same month, CBP encountered 17,171 UACs, a 2,217% increase from 741 UAC encounters in April 2020.³² All of the UACs were turned over to the custody of HHS, while most of the family units were released into the interior of the country to await years-long immigration proceedings—if they show up in court at all.³³

Human smuggling cartels have been using increasingly difficult routes for single adults that were previously only used by drug smugglers. These routes place migrants in more peril and have increased fears of a deadly summer as the weather alone the border becomes more dangerous.³⁴ CBP tracks the number of rescues it makes of migrants left in peril by their smugglers, and its agents are on track to make more than 10,000 such rescues this fiscal year.³⁵ That is twice the number of rescues conducted in FY 2019 and FY 2020.³⁶

²⁶ Southwest Land Border Encounters, U.S. Customs and Border Protection, *available at* <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See Hernandez, Arelis, *Fewer migrant families being expelled at border under Title 42, but critics still push for its end*, WASH. POST (Jun. 13, 2021), *available at* https://www.washingtonpost.com/immigration/fewer-migrant-families-being-expelled-at-border-under-title-42-but-critics-still-push-for-its-end/2021/06/13/422c702c-c7cc-11eb-81b1-34796c7393af_story.html.

³⁴ Miroff, Nick, *Huge border influx brings fears of grim summer for migrant deaths*, Wash. Post (Jun. 3, 2021), *available at* https://www.washingtonpost.com/national-security/summer-migrant-deaths-southern-border/2021/06/03/a03d7bb8-c3a6-11eb-8c34-f8095f2dc445_story.html.

³⁵ *Id.*

³⁶ *Id.*

A. Security Crisis

The numbers of arrivals only include aliens encountered and apprehended by CBP. In addition to the record numbers of apprehension, there are those migrants who evaded capture entirely. The Biden Administration has failed to confront the realities of this crisis due to its improper management of the Border Patrol. Border Patrol, under the Biden Administration, has experienced staffing shortages and low morale. Although staffing issues have been a concern for some time,³⁷ Border Patrol agents are overwhelmed by the care and custody of families and children. These additional responsibilities are also diverting the Border Patrol's attention away from its core mission—to secure the border. The numbers of migrants coming are so overwhelming that the number of migrants who are able to evade the Border Patrol has risen to an estimated 1,000 people per day, in part, because agents are busy with care of those already in its custody.³⁸

To put these numbers into perspective, that is 1,000 people a day illegally crossing the border who are not receiving even cursory background checks, COVID-19 testing, or processing for Immigration Court. Our government has no idea who these people are, but reporting indicates that they could include dangerous gang members,³⁹ sex offenders,⁴⁰ or even terrorists.⁴¹ In fact, CBP has already apprehended two individuals appearing on a national terrorism watchlist this year, raising the specter that other such individuals could be attempting to enter and evade apprehension altogether.⁴² The extremely high number of illegal crossings on the southwest border—and not knowing whether those individuals have criminal backgrounds—is evidence of a security crisis.

B. Public Health Crisis

In addition to the deteriorating security of the southwest border, concerns about the health impacts of the border crisis have grown during President Biden's tenure, particularly regarding the spread of COVID-19. During the COVID-19 pandemic, President Trump utilized the Centers for Disease Control and Prevention's (CDC) Title 42 public health authority to expel

³⁷ See Hesson, Ted, *The Border Patrol's recruiting crisis*, POLITICO (Feb. 10, 2019), available at <https://www.politico.com/story/2019/02/10/border-patrol-recruitment-crisis-1157171>.

³⁸ Miroff, Nick, *Border officials say more people are sneaking past them as crossings soar and agents are overwhelmed*, WASH. POST (Apr. 2, 2021), available at https://www.washingtonpost.com/national/got-aways-border/2021/04/01/14258a1e-9302-11eb-9af7-fd0822ae4398_story.html.

³⁹ See Shaw, Adam, *Border Patrol nabs gang members, including MS-13, attempting to enter US as part of migrant wave*, FOX NEWS (May 2, 2021), available at <https://www.foxnews.com/politics/border-patrol-nabs-gang-members-ms-13>.

⁴⁰ See Virgin, Yami, *Felons, detainees released to the streets, not being picked up by immigration officials*, FOX NEWS SAN ANTONIO, (Apr. 29, 2021), available at <https://news4sanantonio.com/news/local/felons-detainees-released-to-the-streets-not-being-picked-up-by-immigration-officials>.

⁴¹ See Ainsley, Julia, *CBP stopped two men on terrorism watchlist at border, says such incidents are rare*, NBC NEWS, (Apr. 6, 2021), available at <https://www.nbcnews.com/politics/immigration/cbp-stopped-two-men-terror-watchlist-border-says-such-incidents-n1263167>.

⁴² See *id.*

illegal border crossers.⁴³ Although most single adults remain subject to expulsion under Title 42 CDC health authorities, the Biden Administration has allowed the majority of family units and all UACs to enter the United States. Some migrants are COVID-19 positive or entirely untested yet are permitted to enter and travel into the interior of the country.⁴⁴

The Biden Administration has not committed to maintaining Title 42 authority and may terminate it without any public comment.⁴⁵ Furthermore, a court held in November 2020 that Title 42 expulsion authority may not be used for UACs,⁴⁶ leading to a subsequent spike in illegal crossings by UACs after the order.⁴⁷ This foreshadows an even larger spike in overall illegal immigration if the Biden Administration terminates Title 42 authorities across the board.⁴⁸ Although the D.C. Circuit Court of Appeals stayed the injunction against expelling UACs on January 29, 2021, the Biden Administration did not resume repatriating UACs pursuant to Title 42 authority, which led to an even greater surge of UACs.⁴⁹ Currently, only a small percentage of family units are subject to Title 42 expulsions—the vast majority are being permitted to remain in the United States.⁵⁰

DHS has so far failed to adequately respond to committee requests for information on how the Department was working to prevent the spread of COVID-19 within border facilities and in the interior of the United States. Although Secretary Mayorkas asserted that “DHS works to ensure that 100 percent of persons we encounter are tested for COVID-19 through a multi-

⁴³ See Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>

⁴⁴ Greg Norman and Griff Jenkins, *108 illegal immigrants released by Border Patrol in Texas test positive for coronavirus, officials say*, FOX NEWS (Mar. 3, 2021), available at <https://www.foxnews.com/us/108-migrants-released-border-patrol-texas-positive-coronavirus>.

⁴⁵ See *Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists*, U.S. DEP’T OF HEALTH AND HUMAN SERVICES, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 13, 2020), available at <https://www.cdc.gov/coronavirus/downloads/10.13.2020-CDC-Order-Prohibiting-Introduction-of-Persons-FINAL-ALL-CLEAR-encrypted.pdf> (Extending prior Title 42 expulsion orders “until [the CDC director] determine[s] that the danger of further introduction of COVID-19 into the United States has ceased to be a serious danger to the public health, and continuation of this Order is no longer necessary to protect public health.”).

⁴⁶ *P.J.E.S. v. Wolf*, No. 20-2245 (D.D.C. Nov. 18, 2020), available at <https://www.aclu.org/legal-document/ruling-pjes-v-wolf>.

⁴⁷ Email from U.S. Customs and Border Protection to Congressional Staff, January 22, 2020, *on file with committee staff*. (“It is notable that UAC encounters have more than doubled over the past two weeks to levels that exceed those experienced prior to the holidays.”).

⁴⁸ NOTE that the injunction was stayed by the D.C. Circuit Court of Appeals on January 29, 2021; however, the Biden administration did not resume repatriating unaccompanied alien minor children pursuant to Title 42 authority. See *Order Granting Motion for Stay Pending Appeal, P.J.E.S. v. Pecoske*, 20-5357 (D.C. Cir. Jan. 29, 2021) available at <https://www.aclu.org/legal-document/dc-appeals-court-stay-order>.

⁴⁹ See *Order Granting Motion for Stay Pending Appeal, P.J.E.S. v. Pecoske*, 20-5357 (D.C. Cir. Jan. 29, 2021) available at <https://www.aclu.org/legal-document/dc-appeals-court-stay-order>.

⁵⁰ Kight, Stef W., *Scoop: Biden administration expelled just 13% of migrant families in past week*, AXIOS NEWS (Mar. 23, 2021), available at <https://www.axios.com/biden-administration-migrant-families-expelled-247006af-7f95-4896-8a34-85dd973ede68.html>; see also Hernandez, Arelis, *Fewer migrant families being expelled at border under Title 42, but critics still push for its end*, WASH. POST (Jun. 13, 2021), available at https://www.washingtonpost.com/immigration/fewer-migrant-families-being-expelled-at-border-under-title-42-but-critics-still-push-for-its-end/2021/06/13/422c702c-c7cc-11eb-81b1-34796c7393af_story.html.

layered approach,”⁵¹ media reports continue to confirm that migrants are not being tested in CBP custody, while overcrowded facilities exacerbate COVID-19 spread among migrants who may later be released into the interior of the U.S.⁵² For migrants who are not transferred to ICE or HHS custody, but are released directly from CBP custody, these conditions raise the risk that those migrants “could unknowingly expose others as they travel to join friends and family elsewhere in the country.”⁵³

The Biden Administration’s strategy of relying on NGOs to conduct testing and provide quarantine space *after* release is entirely inadequate, as migrants who test positive can leave for the interior of the country before the quarantine period is finished.⁵⁴ The potential for community spread is not a hypothetical scenario, and may be worse than DHS realizes. DHS’s estimates indicate that 5% of single adults and families tested after release are positive for COVID-19, while the rate of positivity for unaccompanied children is about 12%.⁵⁵ Yet on April 15, 2021, ICE informed Committee staff that the positivity rates for aliens coming into ICE custody upon intake from CBP were around 16%, more than three times that DHS estimate.⁵⁶

In the midst of this public health crisis, and without an adequate COVID-19 testing strategy in place, the Biden Administration continues to implement further exceptions to the policy of expelling certain illegal border crossers pursuant to the CDC’s order under Title 42.⁵⁷ These exceptions purportedly include humanitarian reasons,⁵⁸ but DHS officials have refused to identify the specific criteria for these exceptions.⁵⁹ DHS confirmed to the American Civil Liberties Union that “approximately 250” aliens a day, or 7,750 per month, have been admitted into the country based on these unknown criteria.⁶⁰

⁵¹ Letter from Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec., to James Comer, Ranking Member, H. Comm. On Oversight & Gov’t Reform (Apr. 19, 2021) (on file with Committee staff).

⁵² Robles, Frances & Miriam Jordan, *Covid on the Border: Migrants Aren’t Tested on Arrival in U.S.*, N.Y. TIMES (Apr. 28, 2021), available at <https://www.nytimes.com/2021/04/28/us/coronavirus-migrants-testing.html>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Call with U.S. Immigration and Customs Enforcement officials and House and Senate Committees’ Staff (Apr. 15, 2021, 3:30pm).

⁵⁷ Aleaziz, Hamed, *Biden Officials are Considering A Process to Allow Some “Vulnerable” Immigrants To Avoid Trump-Era Border Restrictions*, BUZZFEED NEWS (Apr. 29, 2021), available at <https://www.buzzfeednews.com/article/hamedaleaziz/immigrants-humanitarian-exemptions-us-border>.

⁵⁸ U.S. Dep’t of Homeland Security, Office of Public Affairs, DHS Improves Process for Humanitarian Exceptions to Title 42 (May 12, 2021).

⁵⁹ See Letter from Jim Jordan, Ranking Member, House Committee on the Judiciary, et. al. to Alejandro Mayorkas, Secretary, U.S. Dep’t of Homeland Security (May 25, 2021).

⁶⁰ Camilo Montoya-Galvez, US Commits to Admitting 250 Asylum Seekers Per Day in Concession to Advocates CBSNEWS (May 18, 2021), <https://www.cbsnews.com/news/u-s-to-admit-250-asylum-seekers-per-day-inconcession-to-advocates/>.

C. The Unaccompanied Alien Children Crisis

After a court ruled in November 2020 that UACs were not subject to Title 42 expulsion,⁶¹ the number of UAC encounters began to spike.⁶² Although a higher court has since stayed that injunction,⁶³ the Biden Administration issued an exception for UACs from Title 42 and has refused to repatriate them to their home countries under that authority, instead permitting them all to enter and remain in the U.S.⁶⁴ Predictably, the number of UACs arriving has skyrocketed and overwhelmed the government's capacity to provide them adequate housing and care.

Under the Trafficking Victims Protection Reauthorization Act, UACs who are not nationals of contiguous territory (i.e. Mexico or Canada) and who are not expelled pursuant to Title 42 authorities cannot be swiftly repatriated, but must be placed in immigration court proceedings and transferred from DHS into the custody of the HHS Office of Refugee Resettlement (HHS-ORR) within 72 hours absent exceptional circumstances.⁶⁵ Therefore, HHS-ORR is responsible for the long-term custodial care and placement of unaccompanied alien children.⁶⁶

HHS-ORR looks for sponsors for those children in the U.S., which in most circumstances are parents or other family members already living in the U.S., often illegally.⁶⁷ Critics of this law note that the U.S. government is often completing the smuggling loop for these parents, many of whom paid a smuggler to bring their child to the U.S. in the first place.

In February 2021, CBP encountered 9,457 UACs at the southwest border, a 208% increase since February 2020 (3,070) and a 61% increase since January 2021 (5,858).⁶⁸ In March, CBP encountered 18,951 UACs at the southwest border, a 100% increase over February 2021, a 2,457% increase since March 2020 (741),⁶⁹ and 60% higher than the previous record in

⁶¹ *P.J.E.S. v. Wolf*, No. 20-2245 (D.D.C. Nov. 18, 2020), available at <https://www.aclu.org/legal-document/ruling-pjes-v-wolf>.

⁶² See Email from U.S. Customs and Border Protection to Congressional Staff, January 22, 2020, *on file with committee staff*. (“It is notable that UAC encounters have more than doubled over the past two weeks to levels that exceed those experienced prior to the holidays.”)

⁶³ See Order Granting Motion for Stay Pending Appeal, *P.J.E.S. v. Pecoske*, 20-5357 (D.C. Cir. Jan. 29, 2021) available at <https://www.aclu.org/legal-document/dc-appeals-court-stay-order>.

⁶⁴ See *Notice of Temporary Exception from Expulsion of Unaccompanied Noncitizen Children Encountered in the United States Pending Forthcoming Public Health Determination*, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 11, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDCCauseNotice-ExceptfromExpulsion.pdf>

⁶⁵ See 8 U.S.C. § 1232(b)(3) (“Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.”).

⁶⁶ Fact Sheet, Unaccompanied Children Program, Administration for Children and Families, U.S. Dep't of Health and Human Services (Mar. 1, 2021), available at <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.

⁶⁷ See Miroff, Nick & Maria Sacchetti, *Migrant teens and children have challenged three administrations, but Biden faces rush with no precedent*, WASH. POST (Mar. 22, 2021), available at <https://www.washingtonpost.com/nation/2021/03/22/unaccompanied-minors-immigration-obama-trump-biden/>.

⁶⁸ Southwest Land Border Encounters, U.S. Customs and Border Protection, available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁶⁹ *Id.*

May 2019.⁷⁰ The numbers of UACs encountered went down in April (17,148), May (14,158), and June (15,253), but remained at historically high levels compared to prior years.

In early March, there were about 7,000 UACs in custody,⁷¹ a number that jumped to 13,000 in late March.⁷² As of April 1, there were approximately 18,000 children in U.S. custody between HHS and CBP, with 5,000 in Border Patrol custody.⁷³ The numbers of UACs in government custody peaked at 22,000 in early May.⁷⁴ Even though the numbers of UACs arriving have decreased slightly, their numbers remain at historically high levels and hundreds more children are arriving by the day⁷⁵ while the costs to taxpayers for providing adequate care are skyrocketing.⁷⁶

The majority of UACs—about 70%—are boys, and about three out of four minors are aged 15 and over.⁷⁷ Because of the surge, thousands of children are backed up in CBP custody for well over the 72 hours envisioned by statute, some for more than ten days. CBP holding facilities are not equipped to handle the long-term care needs of children. So many children were arriving that the Biden Administration activated the Federal Emergency Management Agency (FEMA) to attend to the crisis—an unprecedented occurrence.⁷⁸

HHS-ORR operates a network of approximately 200 facilities in 22 states that provide licensed shelter beds for UACs.⁷⁹ Although there were social distancing limitations on HHS's ability to operate at full capacity during the COVID-19 pandemic, after the surge of UACs the CDC permitted those shelters to expand to 100% capacity in early March, stating that those

⁷⁰ Ainsley, Julia, *Record number of unaccompanied children crossed the border in March*, NBC NEWS (Apr. 2, 2021), available at <https://www.nbcnews.com/politics/immigration/record-number-unaccompanied-children-crossed-border-march-n1262901>.

⁷¹ Julia Ainsley & Jacob Soboroff, *Uptick in minors crossing border may result in Biden administration's building more shelters*, NBC NEWS (Feb. 24, 2021), www.nbcnews.com/politics/immigration/uptick-minors-crossing-border-may-result-biden-administration-building-more-n1258746.

⁷² Yilek, Caitlin, *More than 13,000 migrant children in U.S. custody, sources say*, CBS NEWS (Mar. 17, 2021), available at <https://www.cbsnews.com/news/immigration-migrant-children-border-patrol-custody/>.

⁷³ Montoya-Galvez, Camilo, *Nearly 19,000 unaccompanied children entered U.S. border custody in March – an all-time high*, CBS NEWS (Apr. 2, 2021), available at <https://www.cbsnews.com/news/immigration-unaccompanied-children-border-custody-record-19k>.

⁷⁴ Shaw, Adam, *DHS chief Mayorkas says hundreds of migrant kids still coming in daily*, FOX NEWS (May 8, 2021), available at <https://www.foxnews.com/politics/alejandro-mayorkas-dhs-chief-border-facility-unaccompanied-minors-a-day>

⁷⁵ *Id.*

⁷⁶ Sullivan, Eileen, Zolan Kanno-Youngs & Luke Broadwater, *Overcrowded Border Jails Give Way to Packed Migrant Child Shelters*, N.Y. TIMES (May 7, 2021), available at <https://www.nytimes.com/2021/05/07/us/politics/migrant-children-shelters.html>.

⁷⁷ Miroff, Nick & Maria Sacchetti, *Migrant teens and children have challenged three administrations, but Biden faces rush with no precedent*, WASH. POST (Mar. 22, 2021), available at <https://www.washingtonpost.com/nation/2021/03/22/unaccompanied-minors-immigration-obama-trump-biden/>.

⁷⁸ Press Release: Homeland Security Secretary Mayorkas Directs FEMA to Support Response for Unaccompanied Children, Dep't of Homeland Security (Mar. 13, 2021), available at <https://www.dhs.gov/news/2021/03/13/homeland-security-secretary-mayorkas-directs-fema-support-response-unaccompanied>.

⁷⁹ E-mail from Jennifer Schmalz, U.S. Health and Human Services to Congressional Staff, March 25, 2021, *on file with committee staff*.

facilities were safer than congregate settings in CBP facilities.⁸⁰ To alleviate this problem, HHS opened several unlicensed influx shelters and emergency influx shelters, which allowed it to move UACs out of CBP custody more quickly. In recent months, HHS opened more than a dozen emergency intake shelters to house these UACs on sites ranging from army bases to convention centers.⁸¹

Conditions in these emergency intake facilities are concerning. In April, HHS was forced to shut down one warehouse-like facility because it failed to meet agency standards.⁸² Conditions were so bad at that facility that UACs were forced to use plastic bags as toilets due to a staffing shortage.⁸³ Other reports from the Fort Bliss facility indicate that children are monitored to prevent self-harm while others have panic attacks because of the conditions in the tent facilities.⁸⁴ In addition to staff from FEMA,⁸⁵ federal employees from across the government have been called on to leave their positions to come to the border and assist HHS in caring for unaccompanied children.⁸⁶

Although the Biden Administration now reports lower numbers of UACs in CBP custody, those children have simply been transferred into emergency shelters opened by HHS.⁸⁷ U.S. Representative Henry Cuellar, a Democrat from a border district, has correctly highlighted that the Administration is simply moving children “from one tent to the other tent.”⁸⁸

⁸⁰ Kight, Stef W, *CDC lets child migrant shelters fill to 100% despite COVID concern*, AXIOS NEWS (Mar. 5, 2021), available at <https://www.axios.com/cdc-child-migrant-shelter-full-capacity-coronavirus-41d1ae80-1ecf-4815-a755-7b01fac5850b.html>.

⁸¹ Hackman, Michelle & Alicia A. Caldwell, *U.S. Reduces Migrant Children in Border Patrol Custody, but Emergency Shelters Pose New Concerns*, WALL STREET JOURNAL (May 5, 2021), available at <https://www.wsj.com/articles/u-s-reduces-migrant-children-in-border-patrol-custody-but-emergency-shelters-pose-new-concerns-11620234355>

⁸² Vega, Cecilia et. al., *‘Unbearable’ conditions push Biden administration to close Houston migrant center*, ABC NEWS (Apr. 19, 2021), available at <https://abcnews.go.com/US/unbearable-conditions-push-biden-administration-close-houston-migrant/story?id=77156939#:~:text=A%20Houston%20warehouse%20providing%20shelter.it%20after%20just%2017%20days>.

⁸³ *Id.*

⁸⁴ Montoya-Galvez, Camilo, *Migrant children endure “despair and isolation” inside tent city in the Texas desert*, CBS NEWS (Jun. 22, 2021), available at <https://www.cbsnews.com/news/immigration-migrant-children-fort-bliss-tent-city-texas/>.

⁸⁵ Press Release: *Homeland Security Secretary Mayorkas Directs FEMA to Support Response for Unaccompanied Children*, Dep’t of Homeland Security (Mar. 13, 2021), available at <https://www.dhs.gov/news/2021/03/13/homeland-security-secretary-mayorkas-directs-fema-support-response-unaccompanied>.

⁸⁶ Memorandum for Heads of Executive Departments and Agencies from Kathleen M. McGettigan, Acting Director, U.S. Office of Personnel Management re: Detail Opportunity (Mar. 25, 2021), available at <https://chcoc.gov/content/detail-opportunity-information-departmentagency-leadership>.

⁸⁷ *Id.*

⁸⁸ Giaritelli, Anna, *Border Democrats slamming Biden for ‘failed’ response to border crisis*, WASH. EXAMINER (May 9, 2021), available at <https://www.washingtonexaminer.com/news/border-democrats-slamming-biden-for-failed-response-to-border-crisis>.

D. The Burden of Family Units on the Immigration System

In February 2021, CBP encountered 19,246 family units at the southwest border, a 317% increase over February 2020 (4,610), and a 164% increase since January 2021 (7,294).⁸⁹ In March, CBP encountered 54,115 family units at the southwest border, a 1,067% increase over March 2020 (4,635). Numbers of family units began falling slightly in April (50,094) and May (44,639), but rebounded in June (55,805) to high levels not seen since 2019.⁹⁰

The numbers of family units—adult aliens travelling together with children—apprehended on the southwest border skyrocketed in recent years. In all of FY 2013 there were only 14,855 total apprehensions of family units on the southwest border.⁹¹ By FY 2018, there were 107,212, and by FY 2019, 473,682, a record.⁹² This is largely because of a federal court ruling interpreting the *Flores* Settlement Agreement to apply not only to UACs but also to *accompanied* alien children, thereby limiting the ability of DHS to detain family units for longer than 20 days in most cases. Twenty days is not enough time to finish most immigration court proceedings.⁹³

During FY 2020, the number of family units apprehended was only 70,994⁹⁴—a dramatic decrease due to successful implementation of Trump policies, including a combination of near-universal enrollments in the MPP program as well as the beginning of Title 42 expulsions in March due to the COVID-19 pandemic.

Yet, President Biden halted enrollments into the MPP program on his very first day in office, and recent developments in Mexican law have reduced the U.S. government’s ability to expel some family units with younger children.⁹⁵ Under President Biden, only a small percentage of all family units are subject to Title 42 expulsion.⁹⁶ This led to increased numbers of family units arriving at the southwest border.⁹⁷

⁸⁹ Southwest Land Border Encounters, U.S. Customs and Border Protection, *available at* <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁹⁰ *Id.*

⁹¹ U.S. Border Patrol: Total Family Unit Apprehensions by Month – FY2013, *available at* https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Total%20Monthly%20Family%20Unit%20Apprehensions%20by%20Sector%20%28FY%202013%20-%20FY%202019%29_1.pdf

⁹² *Id.*

⁹³ See *Flores v. Johnson*, 212F.Supp.3d 864 (C.D. Cal. Jul. 24 2015), *aff’d Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).

⁹⁴ Southwest Land Border Encounters, U.S. Customs and Border Protection, *available at* <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁹⁵ La Jeunesse, William, *Biden administration’s CBP revives ‘catch and release’ policy at border amid COVID concerns*, FOX NEWS (Feb. 5, 2021) *available at* <https://www.foxnews.com/politics/biden-administrations-cbp-revives-catch-and-release-policy-at-border-amid-covid-concerns>.

⁹⁶ Kight, Stef W., *Scoop: Biden administration expelled just 13% of migrant families in past week*, AXIOS NEWS (Mar. 23, 2021), *available at* <https://www.axios.com/biden-administration-migrant-families-expelled-247006af-7f95-4896-8a34-85dd973ede68.html>.

⁹⁷ See Email from U.S. Customs and Border Protection to Congressional Staff, February 9, 2020, *on file with committee staff*. (“We wish to draw your attention to the dramatic increase in family unit apprehensions – more than quadrupling in just the past two weeks.”).

To prevent overcrowding and ensure children do not spend more than 72 hours in custody, CBP personnel quickly process those family units under Title 8 (instead of Title 42) and release them into the interior without any quarantine or COVID-19 testing, many times without even referring them to ICE for detention or enrollment in an Alternatives to Detention (ATD) program.⁹⁸

The situation is so dire that CBP, in some sectors, is releasing family units into the U.S. without issuing them a Notice to Appear in Immigration Court, putting the onus on the aliens themselves to check in with immigration officials when they arrive at their ultimate destinations and schedule their own court hearings.⁹⁹ The Biden Administration has released tens of thousands of aliens without Notices to Appear in Immigration Court, but has been unable to provide exact numbers of those aliens or how many aliens have timely checked in with immigration officials once they reach their destination in the interior of the U.S.

Meanwhile, ICE has recently expanded capacity to quickly process family units, but is no longer detaining family units at their Family Residential Centers. Instead, ICE is using those facilities to process migrants with Notices to Appear in Immigration Court and enrolling some of them in ATD programs.¹⁰⁰ ICE recently contracted with a non-profit to provide 1,239 beds in hotels near the southern border to house recently arrived family units during processing.¹⁰¹

Current immigration policies have incentivized bringing children to the border to guarantee release into the interior. During the FY 2018-FY 2019 period, so many family units were arriving that DHS was forced to release most of them into the interior of the U.S. within hours of apprehension after issuing them a Notice to Appear in Immigration Court. The incentive to bring a child to secure release was so great that in FY 2019, DHS identified about 4,800 illegal aliens as fraudulent family units and uncovered “child recycling rings,” where children were being used multiple times to help different adult intending immigrants gain illegal entry and release.¹⁰² It is likely that such a situation is already happening again given the incentives to do so.

⁹⁸ La Jeunesse, William, *Biden administration’s CBP revives ‘catch and release’ policy at border amid COVID concerns*, FOX NEWS (Feb. 5, 2021) available at <https://www.foxnews.com/politics/biden-administrations-cbp-revives-catch-and-release-policy-at-border-amid-covid-concerns>.

⁹⁹ Ainsley, Julia, et. al., *Amid surge, border agents in Rio Grande Valley are releasing migrants without court dates*, NBC NEWS (Mar. 22, 2021), available at <https://www.nbcnews.com/politics/immigration/amid-surge-border-agents-rio-grande-valley-now-releasing-migrants-n1261720>.

¹⁰⁰ Sacchetti, Maria, Nick Miroff & Silvia Foster-Frau, *Texas family detention centers expected to transform into rapid-processing hubs*, WASH. POST (Mar. 4, 2021), available at https://www.washingtonpost.com/immigration/texas-family-detention-centers-changed/2021/03/04/6a0bfa8a-7b6f-11eb-b3d1-9e5aa3d5220c_story.html.

¹⁰¹ Statement attributable to ICE Acting Director Tae D. Johnson, U.S. Immigration and Customs Enforcement (Mar. 20, 2021), available at <https://www.ice.gov/news/releases/statement-attributable-ice-acting-director-tae-d-johnson>.

¹⁰² *The Secure and Protect Act: A Legislative Fix to the Crisis at the Southwest Border: Hearing Before the S. Comm. On the Judiciary*, 116th Cong. (2019).

E. The Burden of The Biden Border Crisis on the U.S. Taxpayer

The costs of this crisis continue to rise. The emergency response required to address President Biden's border disaster comes at a steep cost to taxpayers. Massive multi-million-dollar contracts have been awarded to various entities to provide services to the government as it handles the influx of migrants across the southwest border.

The Biden Administration has already awarded \$3 billion to contractors to house the UACs, the majority of which were comprised of no-bid contracts awarded to just three entities.¹⁰³ Documents obtained by the *New York Times* indicate that the Biden Administration estimates that it will need another \$4 billion before the end of the fiscal year to cover the costs of caring for unaccompanied children in custody.¹⁰⁴ This is in addition to money already transferred within HHS for that purpose.¹⁰⁵

HHS has diverted about \$2.1 billion from other health initiatives to cover the cost of caring for the surge of UACs.¹⁰⁶ Those funds include \$850 million diverted from funds allocated by Congress to rebuild the Strategic National Stockpile, which was strained by the COVID-19 pandemic, and another \$850 million was taken from money allocated to expand coronavirus testing.¹⁰⁷ The Biden Administration's border policies are having a detrimental effect on the government's ability to respond to the current pandemic or future pandemics.¹⁰⁸

In one example, HHS awarded a \$255 million no-bid, sole source contract to Family Endeavors, Inc. to help manage the surge of UACs at the border, with a total potential award amount of \$529.5 million.¹⁰⁹ This is the second sizeable government contract Family Endeavors received without going through fair and open competition.¹¹⁰ The contract is more than twelve times Family Endeavors' most recent annual budget, raising questions about its ability to effectively perform the contract and meet the requirements.¹¹¹ Most concerning, it appears that Family Endeavors won those contracts just months after hiring a Biden-Harris transition team

¹⁰³ Shaw, Adam, *Biden administration has spent \$3B on migrant facility contracts: report*, FOX NEWS (May 9, 2021), available at <https://www.foxnews.com/politics/biden-administration-border-migrant-facility-contracts-spending>

¹⁰⁴ Sullivan, Eileen, et. al, *Overcrowded Border Jails Give Way to Packed Migrant Child Shelters*, N.Y. TIMES, (May 7, 2021), available at <https://www.nytimes.com/2021/05/07/us/politics/migrant-children-shelters.html>.

¹⁰⁵ *Id.*

¹⁰⁶ Adam Caryn, *Biden admin reroutes billions in emergency stockpile Covid funds to border crunch*, POLITICO (May 15, 2021), <https://www.politico.com/news/2021/05/15/hhs-covid-stockpile-money-border-migrants-488427>.

¹⁰⁷ *Id.*

¹⁰⁸ Cancryn, Adam, *Biden admin reroutes billions in emergency stockpile, Covid funds to border crunch*, POLITICO (May 15, 2021), available at <https://www.politico.com/news/2021/05/15/hhs-covid-stockpile-money-border-migrants-488427>.

¹⁰⁹ Contract Summary, USASPENDING.GOV (PIID 75ACF121P00005), available at https://www.usaspending.gov/award/CONT_AWD_75ACF121P00005_7590_-NONE-_-NON

¹¹⁰ Giaritelli, Anna, *EXCLUSIVE: ICE gave \$87M no-bid contract to business with Biden ties, raising conflict of interest questions*, WASH. EXAMINER (Apr. 7, 2021), available at <https://www.washingtonexaminer.com/news/biden-ice-gave-87m-no-bid-contract-conflict-of-interest>

¹¹¹ Markay, Lachlan & Stef W. Kight, *Exclusive: Texas nonprofit got massive border contract after hiring Biden official*, AXIOS NEWS (Apr. 13, 2021), available at <https://www.axios.com/texas-nonprofit-border-contract-biden-official-23a493f4-6779-44f0-a5d4-db8690f11aec.htm>

official as its Senior Director for Migrant Services and Federal Affairs.¹¹² ICE also awarded an \$87 million contract to Family Endeavors to house migrant families.¹¹³ The DHS Office of Inspector General has launched an investigation into this contract.¹¹⁴

The Biden Administration has also sought volunteers from across the federal government to deploy to the border to assist in managing the ongoing crisis. At just one agency, the Department of Agriculture, 500 employees were deployed to assist with the UAC program.¹¹⁵ As of May 3, 2021, a total of 624 federal employees were detailed to HHS for up to 120-day deployments according to OPM.¹¹⁶ The total cost of this effort or the impact on other government missions related to the offices and programs sending employees remains unknown.

As expected, the Biden Administration’s immigration policies have led to a crisis requiring costly emergency measures to address. Even with those emergency measures, there remains a security, health, and humanitarian crisis on the southwest border that will not be remedied until the Administration reverses course and re-implements deterrent-focused policies to discourage illegal border crossings while reestablishing the requirement of orderly processing of lawful aliens.

HALTING CONSTRUCTION OF A BORDER BARRIER SYSTEM

Congress has appropriated funds for a border barrier system along the southwest border each year since 2018—a clear signal of Congress’s intent to secure the border with a physical barrier.¹¹⁷ In fact, Congress just appropriated \$1.375 billion in December 2020 “for the construction of [a] barrier system along the southwest border.”¹¹⁸ In addition to funds appropriated by Congress for construction of border barriers, the Trump Administration utilized funds from the Treasury Forfeiture Fund, and reallocated several billion dollars from military

¹¹² *Id.*

¹¹³ See Statement attributable to ICE Acting Director Tae D. Johnson, U.S. Immigration and Customs Enforcement (Mar. 20, 2021), available at <https://www.ice.gov/news/releases/statement-attributable-ice-acting-director-tae-d-johnson>.

¹¹⁴ Spunt, David & Jake Gibson, *DHS Inspector General reviewing huge no-bid contract with company connected to former Biden official*, Fox News (May 31, 2021), available at <https://www.foxnews.com/politics/dhs-inspector-general-probing-huge-no-bid-government-contract-connected-to-former-biden-official>.

¹¹⁵ Amber Athey, Exclusive: Biden admin sending 500 USDA employees to assist with border crisis, SPECTATOR (Apr. 28, 2021), <https://spectator.us/topic/leaked-documents-biden-administration-usda-border-crisis/>

¹¹⁶ Letter from Kathleen M. McGettigan, Acting Director, Office of Personnel Management, to Ranking Member Jody B. Hice, Subcommittee on Government Operations, Committee on Oversight and Reform (May 5, 2021), on file with Committee Staff, *on file with committee staff*.

¹¹⁷ See CRS, *DHS Border Barrier Funding*, Jan. 29, 2020, available at <https://crsreports.congress.gov/product/pdf/R/R45888>.

¹¹⁸ See Consolidated Appropriations Act, 2021, Public Law No. 116-260, p. 275-76, Dec. 27, 2020, available at <https://www.congress.gov/116/bills/hr/133/BILLS-116hr133enr.pdf> (“... An amount equal to the amount made available in section 209(a)(1) of division D of the Consolidated Appropriations Act, 2020...); see also Consolidated Appropriations Act, 2020, Public Law No: 116-93, Div. D, Sec. 209(a)(1), Dec. 16, 2019, available at <https://www.congress.gov/116/plaws/publ93/PLAW-116publ93.pdf>. (“\$1,375,000,000 for the construction of barrier system along the southwest border...”).

construction projects to fund additional border barriers in connection with having issued an emergency declaration.¹¹⁹

As of October 23, 2020, under the Trump Administration, a total of 738 miles of new wall system were funded with 386 miles having already been completed.¹²⁰ In addition, 195 miles were under construction, with 157 miles in the pre-construction phase.¹²¹ The El Paso sector in particular “experienced a significant reduction in drug and smuggling activities in areas where the new border wall system was built.”¹²² The Trump Administration completed the 450th mile of new border wall system constructed on January 5, 2021.¹²³

Despite Congress having appropriated funds for its construction, President Biden signed a proclamation on the day he was inaugurated stopping all construction of the border wall during a 60-day review.¹²⁴ The construction has not resumed. As a result, there are several locations where the wall is incomplete, and materials and equipment are sitting idle even though contracts have been funded, wasting taxpayer money.

President Biden’s position is a reversal of his prior support for the Secure Fence Act of 2006, when he stated that a border fence would prevent “tons” of drugs from entering the country.¹²⁵ Border barriers are an essential part of securing the border, as they have “proved to be a critical component in gaining operational control of the border,” by diverting or slowing illegal crossings of people or contraband.¹²⁶ Border barriers also result in a significant and measurable decrease in illegal entry in the areas they are erected and require less manpower to patrol, saving taxpayer money.¹²⁷

¹¹⁹ See CRS, *DHS Border Barrier Funding*, Jan. 29, 2020, available at <https://crsreports.congress.gov/product/pdf/R/R45888>.

¹²⁰ Press Release, DHS, *The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers*, Oct. 29, 2020, available at <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers#:~:text=CBP%20has%20seen%2079%25%20decrease,wall%20system%20in%20this%20area>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Press Release, DHS, *Statement from Acting Secretary Wolf on the Completion of 450 Miles of Border New Wall System*, Jan. 5, 2021, available at <https://www.dhs.gov/news/2021/01/05/statement-acting-secretary-wolf-completion-450-miles-border-new-wall-system>.

¹²⁴ Proclamation by the President, *Emergency With Respect to the Southern Border of the United States And Redirection of Funds Diverted to Border Wall Construction*, Jan. 20, 2021, available at www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/

¹²⁵ See Andrew Kaczynski, *Joe Biden Once Said a Fence was Needed to Stop ‘Tons’ of drugs from Mexico*, CNN, May 10, 2019, available at <https://www.cnn.com/2019/05/10/politics/kfile-biden-drugs-fence-2006/index.html>

¹²⁶ Press Release, DHS, *The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers*, Oct. 29, 2020, available at <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers#:~:text=CBP%20has%20seen%2079%25%20decrease,wall%20system%20in%20this%20area>.

¹²⁷ *Id.*

FACT CHECKING DEMOCRAT TALKING POINTS

Democrat Talking Points on the Border Simply Do Not Add Up. Democrats decried the humanitarian crisis on the border in 2019, blaming “the Trump Administration’s inhumane policies” for creating it, even though it was Trump policies that alleviated that crisis after a refusal by Democrats in Congress to act.¹²⁸ During the Trump Administration, congressional committees held multiple hearings on the treatment of migrants at the border and conducted several high-profile visits to border detention facilities. Now, Democrats are largely silent.

Democrats in the Biden Administration and in Congress continue to make several misleading or false statements about President Biden’s border crisis, including the following.

Claim: We inherited a broken system/Trump dismantled the asylum system.

Fact Check: FALSE

- More aliens were granted asylum by Immigration Judges under each of the four years of the Trump presidency than were granted under *any* year under the Obama-Biden Administration.¹²⁹
- U.S. Citizenship and Immigration Services, which adjudicates affirmative asylum claims, was on pace to hire 500 new employees in its asylum directorate by the end of 2019, half of whom were asylum officers.¹³⁰ Asylum Officers under the Trump Administration completed many more affirmative asylum applications every year of the Trump presidency than they did in FY 2016 under the Obama-Biden Administration.¹³¹
- The asylum system *is* broken, but not for reasons Democrats claim. The ability to file for asylum—and a crushing backlog of cases that delays prompt adjudication—has incentivized large numbers of individuals to file frivolous or legally insufficient claims to obtain work authorization and to buy time in the United States for years, preceding the Trump Administration. As more and more people file for asylum, the wait, and therefore the incentive to file, continues to grow. Meanwhile, those aliens who have legitimate asylum claims wait years for a hearing on their case, delaying receipt of a benefit to which they may lawfully be entitled. The resulting system benefits illegal aliens who will not win their cases for asylum, while delaying relief for those who truly merit it.
- According to DOJ statistics, approximately 85% of aliens pass the initial credible fear screening before an asylum officer or an immigration judge, but only 15% of those aliens

¹²⁸ Press Release, Maloney Statement on Voting to Pass the Humanitarian Supplemental Bill, H. Comm. on Oversight & Reform (Jun 26, 2019), <https://maloney.house.gov/media-center/press-releases/maloney-statement-on-voting-to-pass-the-humanitarian-supplemental-bill>.

¹²⁹ See Arthur, Andrew R., *Trump did not ‘Dismantle’ or ‘Gut’ the Asylum System*, Center for Immigration Studies (Mar. 24, 2021), available at <https://cis.org/Arthur/Trump-Did-Not-Dismantle-or-Gut-Asylum-System>.

¹³⁰ *Id.*

¹³¹ *Id.*

referred are granted asylum.¹³² This means that out of 100 aliens who claim credible fear, 85 are referred into the Immigration Court system to file for asylum, but only 13 have their cases granted.¹³³

Claim: Crossings began rising in April 2020.

Fact Check: LACKS CONTEXT and MISLEADING

- Crossings only rose in April 2020, because in March 2020, they plummeted due to the COVID-19 public health emergency.¹³⁴ And even though illegal crossings rose during the final months of the Trump presidency, almost all illegal border crossers including family units and UACs were being expelled and repatriated under Title 42—they were not permitted to enter and reside in the United States.
- UAC crossings began rising when a court ruled in November 2020 that the Trump Administration could not use Title 42 for UACs, and then continued rising as President Biden refused to reinstate the policy even though a higher court stayed the injunction.

Claim: The border is closed to illegal immigration.

Fact Check: FALSE

- The Biden Administration is permitting all UACs from noncontiguous territories to enter the U.S. and is referring them to HHS for housing and release to sponsors in the U.S.
- The vast majority of family units—87%—are being processed and released within only a few days to reside in the U.S. during the pendency of Immigration Court proceedings.
- Only single adult aliens are still near-universally subject to Title 42 expulsion, yet recidivism has increased. Estimates for “gotaways” at the border numbered at one point 1,000 people per day—people who gained entry without being apprehended.¹³⁵

Claim: Walls and fences don't work.

Fact Check: FALSE

¹³² Executive Office for Immigration Review Adjudication Statistics- Credible Fear and Asylum Process: FY 2019 Quarter 2, available at <https://www.justice.gov/eoir/page/file/1148911/download>.

¹³³ *Id.* Note also that out of that 100, only 48 would actually file the asylum application. Moreover, out of the 85 individuals referred to the Immigration Court, 29 would be ordered removed *in absentia* after failing to appear at an Immigration Court hearing.

¹³⁴ Southwest Land Border Encounters, U.S. Customs and Border Protection, available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

¹³⁵ Miroff, Nick, *Border officials say more people are sneaking past them as crossings soar and agents are overwhelmed*, WASH. POST (Apr. 2, 2021), available at https://www.washingtonpost.com/national/got-aways-border/2021/04/01/14258a1e-9302-11eb-9af7-fd0822ae4398_story.html.

- DHS has affirmed that the wall system works to disrupt criminals and slow smugglers, stating that border barriers have “proved to be a critical component in gaining operational control of the border.”¹³⁶
- It is important to note that where a wall system was constructed it resulted in a significant decrease in illegal entry while also saving taxpayer money by requiring less manpower.¹³⁷ For example, CBP experienced a 79% decrease in apprehensions in an area with a completed border wall system in one zone of the Rio Grande Valley Sector.¹³⁸
- President Biden previously supported the Secure Fence Act of 2006, stating that the fence would prevent “tons” of drugs from entering the country.¹³⁹

¹³⁶ Press Release, DHS, *The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers*, Oct. 29, 2020, available at <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers#:~:text=CBP%20has%20seen%2079%25%20decrease,wall%20system%20in%20this%20area>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See Andrew Kaczynski, *Joe Biden Once Said a Fence was Needed to Stop ‘Tons’ of drugs from Mexico*, CNN, May 10, 2019, available at <https://www.cnn.com/2019/05/10/politics/kfile-biden-drugs-fence-2006/index.html>

Republican Oversight vs. Democrat Silence

Congressional Republicans have tried to oversee the Biden Administration's border policies and plans to address the border crisis, even as Democrats have refused to hold hearings and hold the Administration accountable. Although Democrats once cared about the border in a very public way during the Trump Administration, they are now largely silent when their party controls the White House.¹⁴⁰

On February 4, 2021, Committee on Oversight and Reform Republicans sent a letter to DHS demanding information about the halt in border barrier construction but have not yet received any response to date.¹⁴¹

On February 17, 2021, Judiciary Committee Ranking Member Jim Jordan and Oversight Committee Ranking Member James Comer sent a letter to ICE demanding information on the new ICE priorities, including how ICE would be treating gang members and other dangerous criminals for purposes of enforcement actions.¹⁴² ICE has not provided a formal response to date.

Since the initial letter, Committee on Oversight and Reform Republicans have sent three letters to DHS Secretary Mayorkas demanding information on the Administration's plan to reduce illegal border crossings by UACs and family units and to prevent the spread of COVID-19 in custodial facilities along the southwest border and protect CBP personnel and border communities from community spread.¹⁴³ DHS provided a narrative response on April 19, 2021 which did not explain what the Administration is doing to reduce illegal border crossings at all, and provided only limited explanations for the Administration's COVID-19 response actions.¹⁴⁴

Committee on Oversight and Reform Republicans have sent three letters to Chairwoman Maloney asking for a hearing on the border crisis but have been met with silence from the

¹⁴⁰ Sullivan, Eileen, *Democrats, Once Outraged, Take a Quieter Approach to Migrant Children*, N.Y. TIMES (May 24, 2021), available at <https://www.nytimes.com/2021/05/24/us/politics/democrats-migrant-children.html>.

¹⁴¹ Letter from James Comer, Ranking Member, et al., H. Comm. On Oversight & Gov't Reform, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Feb. 4, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/02/DHS-letter-re-border-wall-020421.pdf>.

¹⁴² Letter from James Comer, Ranking Member, H. Comm. On Oversight & Gov't Reform, Jim Jordan, Ranking Member, Committee On the Judiciary, to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, Dep't of Homeland Sec. (Feb. 17, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/02/Letter-to-ICE-re-Enforcement-Priorities-Memorandum1.pdf>.

¹⁴³ Letter from James Comer, Ranking Member, et al., H. Comm. on Oversight & Gov't Reform, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Feb. 19, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/02/Letter-to-Mayorkas-re-Border-Crisis-021921.pdf>; Letter from James Comer, Ranking Member, et al., H. Comm. on Oversight & Gov't Reform, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Mar. 10, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/03/Follow-up-Letter-to-Mayorkas-re-Border-Crisis.pdf>; Letter from James Comer, Ranking Member, et al., H. Comm. On Oversight & Gov't Reform, to Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Apr. 19, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/04/Letter-to-Mayorkas-re-Wall-and-Border-Crisis-4th-letter1.pdf>.

¹⁴⁴ Letter from Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., to James Comer, Ranking Member, H. Comm. On Oversight & Gov't Reform (Apr. 19, 2021) (on file with Committee staff).

Democrats.¹⁴⁵ In stark contrast to the current inaction, Committee Democrats held multiple hearings on the border conditions during the Trump Administration.

Committee on the Judiciary Republicans have sent four letters to Committee Chairman Nadler, Immigration Subcommittee Chairwoman Lofgren, and Crime Subcommittee Jackson-Lee requesting a hearing on the Biden border crisis, but have received no responses.¹⁴⁶ However, Committee Democrats held multiple hearings on the Trump Administration border policies.

On April 19, 2021, Ranking Members Comer, Jordan, and Katko sent a letter to Vice President Kamala Harris asking for a meeting with her to clarify her role in solving the Biden Border Crisis given that she had taken no actions at the time to alleviate the situation.¹⁴⁷ Vice President Harris ignored this letter.

Ranking Members Jordan and McClintock sent a letter to DHS Secretary Mayorkas demanding information about warnings provided to Biden transition officials by Trump Administration officials that undoing Trump policies would lead to a surge at the border.¹⁴⁸

Upon reports that the Biden Administration plans to send \$4 billion to corrupt Northern Triangle countries to address “root causes” of the immigration crisis, on May 3, 2021, Oversight Republicans and Budget Committee Republicans sent a letter to Office of Management and Budget (OMB) demanding information about these cash transfers and the oversight that would

¹⁴⁵ Letter from James Comer, Ranking Member, et al., H. Comm. On Oversight & Gov’t Reform, to Carolyn B. Maloney, Chairwoman, H. Comm. On Oversight & Gov’t Reform (Mar. 4, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/03/Letter-to-Chairwoman-Maloney-on-UAC-Border-Crisis-Hearings-030421.pdf>; Letter from James Comer, Ranking Member, et al., H. Comm. On Oversight & Gov’t Reform, to Carolyn B. Maloney, Chairwoman, H. Comm. On Oversight & Gov’t Reform (Mar. 25, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/03/Letter-to-Maloney-re-Border-Crisis-32521.pdf>; Letter from James Comer, Ranking Member, et al., H. Comm. On Oversight & Gov’t Reform, to Carolyn B. Maloney, Chairwoman, H. Comm. On Oversight & Gov’t Reform (June 2, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/06/Letter-to-Chairwoman-Maloney-re-UAC-Crisis-final.pdf>.

¹⁴⁶ Letter from Tom McClintock, Ranking Member, et al., H. Comm. on the Judiciary, Subcomm. on Immigration and Citizenship, to Zoe Lofgren, Chairwoman, H. Comm. on the Judiciary, Subcomm. on Immigration and Citizenship (Mar. 4, 2021), available at <https://republicans-judiciary.house.gov/wp-content/uploads/2021/03/2021-03-04-GOP-Imm.-to-Lofgren-re-border-hearing.pdf>; Letter from Tom McClintock, Ranking Member, H. Comm. on the Judiciary, Subcomm. on Immigration and Citizenship, to Zoe Lofgren, Chairwoman, H. Comm. on the Judiciary, Subcomm. on Immigration and Citizenship (Mar. 12, 2021); Letter from Andy Biggs, Ranking Member, et al., H. Comm. on the Judiciary, Subcomm. on Crime, Terrorism, and Homeland Security, to Shelia Jackson-Lee, Chairwoman, H. Comm. on the Judiciary, Subcomm. on Crime, Terrorism, and Homeland Security (Mar. 18, 2021), available at <https://republicans-judiciary.house.gov/wp-content/uploads/2021/03/2021-03-18-GOP-Crime-to-SJL-re-hearing.pdf>; Letter from Jim Jordan, Ranking Member, H. Comm. on the Judiciary, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Apr. 15, 2021), available at <https://republicans-judiciary.house.gov/wp-content/uploads/2021/04/2021-04-15-JDJ-to-Nadler-re-Mayorkas.pdf>.

¹⁴⁷ Letter from Jim Jordan, Ranking Member, H. Comm. on the Judiciary, et. al. to Kamala Harris, Vice President of the United States (Apr. 19, 2021), available at <https://republicans-judiciary.house.gov/wp-content/uploads/2021/04/2021-04-19-JDJ-Katko-Comer-to-VP-Harris-re-border-crisis.pdf>.

¹⁴⁸ Letter from Jim Jordan, Ranking Member, H. Comm. on the Judiciary, to Alejandro Mayorkas, Secretary, Dep’t. of Homeland Security (Mar. 30, 2021), available at <https://republicans-judiciary.house.gov/wp-content/uploads/2021/03/Jordan-to-Mayorkas69.pdf>.

be involved.¹⁴⁹ OMB responded to this request confirming the Administration’s plans and with some responsive information but to date, OMB has not fully satisfied the request for documents and information.

On April 21, 2021, Oversight and Reform Republicans sent a letter to HHS Secretary Xavier Becerra demanding information about a very large sole-source contract awarded to a nonprofit to provide services for an Emergency Intake Site for UACs after a former Biden transition official took a job at that nonprofit, raising conflict of interest concerns.¹⁵⁰ HHS has not yet responded to that request.

Continuing this investigation, Ranking Members Jordan and Comer sent letters to HHS, ICE, and Endeavors, Inc. regarding millions of dollars in sole source contracts awarded to Endeavors, Inc. despite concerns of conflicts of interest, given that a Biden transition official was hired by Endeavors, Inc. shortly before the contracts were awarded.¹⁵¹ DHS OIG is now investigating the ICE contract.¹⁵²

On May 25, 2021, Ranking Members Comer, Jordan, and Katko sent a letter to DHS requesting the criteria for exceptions to Title 42 expulsion criteria.¹⁵³ DHS provided a short summary of the criteria but have not yet provided the full criteria to Congress as requested.

Republicans actively sought to hold the Biden Administration accountable for its actions on the border, but Democrats have refused to act or conduct *any* oversight.

CONCLUSION

Through his words, actions, and policies, President Biden has made clear that illegal immigration will be welcomed and met with little consequence, particularly where children are used as pawns by smuggling organizations and their parents. These policies created a security, humanitarian, and public health crisis on the southwest border. They have also come at a high

¹⁴⁹ Letter from James Comer, Ranking Member, H. Comm. On Oversight and Gov’t Reform, et al., to Shalanda D. Young, Acting Director, Office of Mgmt. and Budget (May 3, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/05/Letter-to-OMB-re-Northern-Triangle-Cash-Payments.pdf>.

¹⁵⁰ Letter from James Comer, Ranking Member, et al., H. Comm. On Oversight & Gov’t Reform, to Xavier Becerra, Sec’y, U.S. Dep’t of Health and Human Serv. (Apr. 21, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/04/Letter-to-Secretary-Becerra-on-HHS-Family-Endeavors-Contract-042121.pdf>.

¹⁵¹ Letter from James Comer, Ranking Member, H. Comm. On Oversight & Gov’t Reform, et al., to Jon Allman, President and CEO, Endeavors, Inc. (May 13, 2021), available at https://www.scribd.com/document/507765747/2021-05-13-JDJ-JC-TM-to-HHS-Re-Contracts-combined#download&from_embed.

¹⁵² Spunt, David, & Jake Gibson, *DHS Inspector General reviewing huge no-bid contract with company connected to former Biden official*, FOX NEWS (May 31, 2021), available at <https://www.foxnews.com/politics/dhs-inspector-general-probing-huge-no-bid-government-contract-connected-to-former-biden-official>.

¹⁵³ Letter from James Comer, Ranking Member, H. Comm. On Oversight & Gov’t Reform, et al., to Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (May 25, 2021), available at <https://republicans-oversight.house.gov/wp-content/uploads/2021/05/05-25-21-Jordan-Katko-Comer-to-Mayorkas-re-Title-42-Exemption-Criteria.pdf>.

cost to the taxpayer as the Biden Administration responds with expensive emergency measures and a haphazard reactionary approach.

As the numbers of illegal aliens apprehended approaches historically high levels, many such aliens are successfully arriving in the United States without being apprehended by U.S. officials. Most of those who are apprehended are permitted to remain in the United States and sent into the interior of the country to await years-long immigration court proceedings—assuming they even show up or are even required to depart if ultimately ordered removed.

The situation is dire and will persist until the Administration reverses course and works with Congress to fix the incentives driving these historically high levels of illegal immigration. Democrats are in denial about the crisis on the border and the causes for it and have actively opposed Republican solutions in the past. The Biden Administration needs to implement deterrent policies and Congress needs to act to provide long-term change.

Some solutions Republicans have offered in the past have been to strengthen the asylum system by rooting out frivolous or fraudulent applications, including efforts to require aliens to apply for asylum in the first safe country they come to; fixing a loophole caused by a federal court's interpretation of the *Flores* settlement agreement that prevents family units from being detained long enough to finish immigration proceedings in most cases; and reforming the Trafficking Victims Protection Reauthorization Act to permit unaccompanied alien children from noncontiguous territories to be safely and swiftly repatriated. In the meantime, Congressional Republicans will continue to hold the Administration accountable for their actions and their natural and probable consequences.