

117TH CONGRESS
2D SESSION

S. RES. 741

To express the sense of the Senate regarding the constitutional right of State Governors to repel the dangerous ongoing invasion across the United States southern border.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2022

Mr. MARSHALL submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

To express the sense of the Senate regarding the constitutional right of State Governors to repel the dangerous ongoing invasion across the United States southern border.

Whereas, during a 2019 Democratic presidential primary debate, President Biden called for “all those people seeking asylum” to “immediately surge to the border”;

Whereas, during a 2019 Democratic presidential primary debate, President Biden raised his hand when candidates were asked if their health plans will provide coverage for illegal immigrants;

Whereas, during a 2020 Democratic presidential primary debate, President Biden pledged support for “sanctuary cities” when he stated that illegal immigrants arrested by

local police should not be turned over to Federal immigration authorities;

Whereas, on January 20, 2021, one of President Biden’s first actions as President was sending proposed legislation, the U.S. Citizenship Act, to Congress, which would provide a path to citizenship for an estimated 10,000,000 to 12,000,000 illegal immigrants who are currently residing in the United States;

Whereas, on January 20, 2021, President Biden also issued a “Proclamation on the Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction”, which halted construction of physical barriers along the international border between the United States and Mexico, and he later terminated existing border wall construction contracts and failed to obligate more than \$1,000,000,000 that Congress had lawfully appropriated for border wall construction;

Whereas, on January 20, 2021, President Biden also halted enrollments in the Migrant Protection Protocols policy, which is also known as the “remain in Mexico” program;

Whereas on February 6, 2021, U.S. Secretary of State Antony Blinken suspended and terminated the Asylum Cooperative Agreements with the Governments of El Salvador, of Guatemala, and of Honduras;

Whereas in March 2022, the Department of Homeland Security began implementing the interim final rule titled “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers” which authorizes U.S. Citizenship and Immigration Services to consider

the asylum applications of individuals subject to expedited removal and violates the law enacted by Congress that requires asylum seekers to offer evidence to persuade a judge in an immigration court;

Whereas, during fiscal year 2021, U.S. Immigration and Customs Enforcement executed 59,000 deportations, which represents the lowest number of deportations since fiscal year 2008, and fewer than $\frac{1}{3}$ as many deportations as the number of people who were deported during fiscal year 2020, and is significantly lower than the 226,000 to 410,000 removals that occurred every fiscal year since 2008;

Whereas, during fiscal year 2021, U.S. Immigration and Customs Enforcement—

(1) arrested 48 percent fewer convicted criminals than had been arrested during the prior fiscal year;

(2) deported 63 percent fewer criminals than had been deported in the prior fiscal year; and

(3) issued 56 percent fewer “detainer requests” to local authorities than had been issued in the prior fiscal year;

Whereas, during fiscal year 2021, U.S. Customs and Border Protection made more than 1,700,000 arrests of illegal immigrants along the international border between the United States and Mexico, which is the highest level ever recorded, and is on pace to arrest more than 2,000,000 illegal immigrants along such border during fiscal year 2022;

Whereas, on April 1, 2022, President Biden announced the termination of a public health policy used to expel potentially infected illegal immigrants during the COVID-19 pandemic (commonly known as “title 42”);

Whereas, on September 30, 2021, Department of Homeland Security Secretary Alejandro Mayorkas issued a memorandum titled “Guidelines for the Enforcement of Civil Immigration Law”, which stated that an alien’s illegal status in the United States should not be the sole basis of an enforcement action and prioritized for apprehension and removal aliens who are a threat to national security, public safety, or border security;

Whereas, on October 12, 2021, Secretary Mayorkas issued a memorandum titled “Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual”, which included Department-wide guidance to cease mass worksite operations, among other instructions;

Whereas, on October 27, 2021, Secretary Mayorkas issued a memorandum titled “Guidelines for Enforcement Actions in or Near Protected Areas”, which listed numerous protected areas where the enforcement of Federal immigration law should not occur;

Whereas, in May 2022, U.S. Customs and Border Protection arrested 239,416 illegal immigrants along the international border between the United States and Mexico, which is the highest number of arrests ever recorded in a single month;

Whereas President Biden’s fiscal year 2023 budget request aims to shift the Department of Homeland Security’s border management away from enforcement and toward “effectively managing irregular migration along the Southwest border”;

Whereas U.S. Customs and Border Protection has apprehended illegal immigrants from Mexico, Guatemala, El Salvador, Nicaragua, Cuba, Haiti, Brazil, other Central and Latin American nations, Turkey, India, Russia, and other nations outside of the Western Hemisphere;

Whereas U.S. Customs and Border Patrol has apprehended 50 people since October 1, 2021 along the international border between the United States and Mexico who are listed on the Federal Bureau of Investigations' terrorist screening database;

Whereas, U.S. Customs and Border Protection arrested more than 7,000 illegal aliens in fiscal year 2022 who have been convicted of 1 or more crimes in the United States or abroad, including—

- (1) 219 convicted sexual criminals;
- (2) 45 who were convicted of homicide or manslaughter;
- (3) 195 who were convicted of illegal weapons possession, transport, or trafficking;
- (4) 561 who were convicted of burglary, robbery, larceny, theft, or fraud; and
- (5) 711 who were convicted of assault, battery, or domestic violence;

Whereas, during fiscal year 2021, U.S. Customs and Border Protection seized—

- (1) 11,203 pounds of fentanyl;
- (2) 5,400 pounds of heroin;
- (3) 191, 824 pounds of methamphetamine;
- (4) 97,638 pounds of cocaine; and
- (5) 10,848 pounds of ketamine;

Whereas, provisional data from the National Center for Health Statistics of the Centers for Disease Control and

Prevention estimates that there were 107,622 drug overdose deaths in the United States during 2021, an increase of nearly 15 percent from the estimated 93,655 deaths in 2020, with overdose deaths involving opioids increasing from an estimated 70,029 in 2020 to an estimated 80,816 in 2021, and overdose deaths from synthetic opioids (primarily fentanyl), psychostimulants (such as methamphetamine), and cocaine also increasing during 2021.

Whereas clause 1 of section 10 of article I of the United States Constitution states, in part, “No State shall, without the Consent of Congress . . . engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”;

Whereas section 4 of article IV of the United States Constitution states, in part, “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion”;

Whereas, in the context of known security concerns due to a lack of proper vetting processes and systems, and in conjunction with how the mass unlawful movement of people across the border of the United States directly empowers and enriches cartels and transnational gangs, the totality of such activity constitutes an invasion;

Whereas, on October 26, 2021, Arizona State Representative Jake Hoffman sent a letter to Arizona Attorney General Mark Brnovich requesting a formal legal opinion determining whether President Biden has violated his obligations to protect Arizona from invasion under section 4 of article IV of the United States Constitution; and

Whereas, on February 7, 2022, Arizona Attorney General Mark Brnovich issued a formal legal opinion, which states, in part—

(1) “The on-the-ground violence and lawlessness at Arizona’s border caused by cartels and gangs is extensive, well-documented, and persistent. It can satisfy the definition of ‘actually invaded’ and ‘invasion’ under the U.S. Constitution.”; and

(2) “Arizona retains the independent authority under the State Self-Defense Clause to defend itself when actually invaded.”: Now, therefore, be it

1 *Resolved*, That the Senate finds that—

2 (1) President Biden’s dereliction of duty and
3 failure to take care that the laws be faithfully exe-
4 cuted at our southern border has directly put the
5 citizens of all 50 States in danger and has resulted
6 in loss of life;

7 (2) the violent activity and smuggling of drugs,
8 humans, guns, and other illicit goods carried out by
9 drug cartels and transnational criminal organiza-
10 tions, and the crossing of the international border
11 between legal ports of entry by significant numbers
12 of individuals contrary to the laws of the United
13 States, meet the definitions of—

14 (A) “actually invaded” under clause 3 of
15 section 10 of article I of the United States Con-
16 stitution; and

1 (B) “invasion” under section 4 of article
2 IV of the United States Constitution; and
3 (3) Governors of all 50 States possess the au-
4 thority and power as Commander-in-Chief of their
5 respective States to repel the invasion described in
6 paragraph (2).

○