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THE COST OF THE BORDER CRISIS

HEARING

BEFORE THE

COMMITTEE ON THE BUDGET
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, D.C., MAY 8, 2024

Serial No. 118–13

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THE COST OF THE BORDER CRISIS

WEDNESDAY, MAY 8, 2024

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, D.C.

The Committee met, pursuant to call, at 10:02 a.m., in Room 210, Cannon Building, Hon. Jodey Arrington [Chairman of the Committee] presiding.

Present: Representatives Arrington, McClintock, Grothman, Smucker, Carter, Cline, Good, Bergman, Roy, Moore, Valadao, Estes, McClain, Fischbach, Yakym, Brecheen, Edwards, Boyle, Schakowsky, Kildee, Peters, Doggett, Panetta, Omar, Balint, and Espaillat.

Chairman ARRINGTON. This hearing will come to order. Welcome to the Committee on the Budget's hearing on the cost of the current border crisis. I would like to welcome our panel of expert witnesses, Ms. Julie Kirchner, the Executive Director of the Federation for American Immigration Reform. Mr. Ammon Blair, Senior Fellow for the Texas Public Policy Foundation's "Secure and Sovereign Texas" Initiative. Mr. Brent Smith from Kinney County. He's the Kinney County Attorney there in West Texas. It shares 17 miles of border with Mexico located between Del Rio and Eagle Pass for those of you who are familiar with the great State of Texas, and then of course, we have Mr. David Bier, the Director of Immigration Studies at the Cato Institute. Lady, gentlemen, welcome to the hearing.

I am going to make an opening statement. I yield as much time as I may need. I will try to just talk through this a little bit. The American people, I think, at this point are as familiar on this issue as any with respect to the wide-open borders in the United States and the epic humanitarian disaster that has ensued as a result, and the greatest national security threat to the American people is posed by these open borders.

So, the social cost, I think, has been well in front of the American people consistently, but I don't think we have talked enough about the financial burden to taxpayers and the fiscal impact. FAIR has done a great job. I have seen studies that suggest this cost is upward of $400 billion. Their cost estimate is at $150 billion. The lion's share of that cost is borne by state and local governments, and friends, state and local governments cannot borrow or print money like the Federal Government, and so, they are having to balance their budgets by either absorbing this cost through raising taxes or they are having to cut services to their citizens. The $150 billion, when you look at the 22 million people that are estimated

to be in this country illegally comes out to about $9,000, tax dollars per illegal immigrant.

So, I want you to listen. I want everybody to listen to this stat, $9,000 roughly per illegal immigrant that taxpayers are fronting. That is more than we spend per Medicaid beneficiary. That is more than we spend on the most vulnerable American citizen for their health care. That is more than we spend for our heroes, our veterans in the way of military retirement benefits. So, I think for everyone, this should be unacceptable. I believe it is quite avoidable, but this is the real and significant, and at the state and local levels, especially, unsustainable cost of the current border crisis.

Texas, in my home state alone, we have spent over $13 billion which is about $4,500 per illegal immigrant in Texas. Just to give you an example or a sample list of services we are providing for people who are here illegally, it is about $3 billion extra dollars for Head Start. At the state level, it is $70 billion across the United States for public education, and states have a very difficult time prioritizing and investing in public education because of the cost of health care, and now the cost of illegal immigration. You look at criminal justice, it is about $12 billion extra in criminal justice costs across the United States, tens of billions of dollars in uncompensated care at hospitals.

We talk all the time as a Committee about how health care costs are driving our deficits and national debt. Medicare alone is a trillion dollars, and that will double over the next ten years, and we have got tremendous cost, and that is not to even consider the crowding out of our citizens who are in need for these spaces and hospitals, seats for our students in their schools. So, it is real and we have quantified it, and I am grateful for the work of FAIR.

I think I would say at a time when we have record deficits, the highest level of indebtedness in our Nation's history, surpassing a time of war when we are in relative peace and prosperity, at a time when our fellow Americans are spending now about $1,300 more a month because of the inflation tax, where we are looking at an economy teetering on recession, we have seen inflation uptick the last month. We saw the first quarter GDP not even get half of its expectation. I am concerned about it, but then you are going to add $150 billion in unnecessary cost because of illegal immigration.

Now, let me say something, and I am done about CBO. CBO talks about the benefits of immigration, and let me be clear. We need legal immigration. Legal immigration is a hallmark of the American experiment, the new blood, hungry for opportunity and freedom and the American dream. There is nothing more American than that. There is nothing more un-American than lawlessness and chaos and the lack of respect for rule of law. That is all I am trying to contrast here, but here's what CBO does, and it ticks me off, actually. They take into consideration some of the benefits of illegal immigration in terms of jobs filled and revenue as a result, and some taxes paid, by the way. That $150 billion is the net after we back out about $30 billion in taxes. What I would like to submit to my colleagues is that CBO, in order to do their job, to provide the full picture and accurate information for us as lawmakers, to make the decisions and value judgments, is to have the full net cost, and that is, that $150 billion is in no CBO analysis whatso-

ever, but the benefits are. Seems a little odd to me, seems biased to me, and I am going to make sure as long as I am Chairman, that that full picture is represented so my Democrat colleagues and my Republican colleagues and us as a Committee can just deal with the facts and make decisions, and act accordingly.

With that, I appreciate you, again, witnesses, taking time to provide your counsel and insight at this very important hearing, and I am going to turn it over to my friend and Ranking Member, Mr. Boyle.

[The prepared statement of Chairman Arrington follows:]

CHAIR JODEY ARRINGTON

HOUSE BUDGET COMMITTEE

Arrington Opening Statement at "The Cost of the Border Crisis" Hearing

May 8, 2024

As prepared for delivery

"The American people are as familiar with this issue as any, with respect to the wide open borders in the United States and the humanitarian disaster that has ensued as a result. The greatest national security threat to the American people is posed by these open borders. The social cost has consistently been well in front of the American people, but I don't think we've talked enough about the financial burden to taxpayers and the fiscal impact.

The Federation for American Immigration Reform (FAIR) has done a great job. Studies suggest this cost is upwards of $**400 billion**, but their cost estimate is $**150 billion**. The lion's share of that cost is borne by state and local governments. State and local governments can't borrow or print money like the federal government, so they have to balance their budgets by either absorbing this cost through raising taxes or they have to cut services to their citizens.

This **$150 billion**, when you look at the **22 million people** that are estimated to be in this country illegally, comes out to about **$9,000 tax dollars per illegal immigrant**.
Roughly **$9,000 per illegal immigrant** that taxpayers are fronting. That's more than we spend per Medicaid beneficiary. That's more than we spend on the most vulnerable American citizen for their health care. That's more than we spend for our heroes and our veterans in the way of military retirement benefits.

For everyone, this should be unacceptable. I believe that it is quite avoidable, but this is a real, significant, and unsustainable cost of the current border crisis.

In my home state of Texas alone, we've spent over **$13 billion**, which is about **$4,500 per illegal immigrant in Texas**. To give you a sample list of services we're providing for people who are here illegally, it's about **$3 billion** extra for Head Start. At the state level, public education **costs $70 billion** across the United States. States have a very difficult time prioritizing and investing in public education because of the cost of health care, and now the cost of illegal immigration.

If you look at criminal justice, it's about **$12 billion** extra in criminal justice costs across the United States, which is tens of billions of dollars in uncompensated care at hospitals. We talk all the time as a Committee about how health care costs are driving our deficits and national debt. Medicare alone is **$1 trillion**, and that will double over the next ten years, and we've got tremendous costs, not to even consider the crowding out of our citizens who need these spaces in hospitals and seats for our students in their schools. It is real, and we've quantified it, and I'm grateful for the work of FAIR.

At a time when we have record deficits, the highest level of indebtedness in our nation's history, surpassing a time of war when we're in relative peace and prosperity. At a time when our fellow Americans are spending now about **$1,300 more a month** because of the inflation tax, where we're looking at an economy teetering on recession, we've seen inflation uptick the last month; we saw the first quarter GDP, not even get half of its expectation. I'm concerned about it, but then you're going to add **$150 billion** in unnecessary costs because of illegal immigration. Now, let me say something.

The Congressional Budget Office (CBO), which talks about the benefits of immigration - and let me be clear - we need legal immigration. Legal immigration is a hallmark of the American experiment. The new blood that is hungry for opportunity, freedom, and the American dream, there's nothing more American than that. **There's nothing more un-American than lawlessness and chaos and the lack of respect for the rule of law**.

That's what I'm trying to contrast here, **but here's what CBO does: they take into consideration some of the benefits of illegal immigration in terms of jobs filled, revenue as a result, and some taxes paid**. That **$150 billion** is the net after we back out about **$30 billion** in taxes. What I would like to submit to my colleagues is that CBO, in order to do their job by providing the full picture and accurate information for us as lawmakers to make the decisions and value judgments, is to have the ability to have the full net cost. That **$150 billion is in no CBO analysis whatsoever**, but the benefits seem a little odd and biased to me. I will ensure that as long as I am Chairman, that full picture is represented so my Democrat colleagues, my Republican colleagues, and us as a Committee can deal with the facts and make decisions accordingly."

Mr. BOYLE. Well, thank you Mr. Chairman, and like you, I thank the witnesses for taking time to be here today out of your busy schedules. I want to do a few things in my opening remarks. First is to make clear how proud I am that we are, as President Kennedy once wrote in his book, a nation of immigrants. More than 90 percent of the American people, myself included, are descendants of immigrants. In my case, it is my father who came here from Ireland when he was 19 years old, looking for economic opportunity, as well as my mother's parents who sailed here on the SS George Washington right after the second World War. Their story is like millions and millions of American families who worked hard, played by the rules, and in doing so were able to provide more opportunities for their children than they had themselves. My family has been able to live the American dream.

And you know, if you go back to the very beginning of the nation, almost 250 years ago in my district at Independence Hall in Philadelphia, if at that time you had said, you know, we are going to build a new country, but we are not going to build it of the elite or the affluent of Europe or any great power, no, this new country on this continent is going to be comprised by those who are on the bottom rungs of the ladder in societies where they come from, and we are also going to add on to that slavery and build the nation with slaves and then descendants of slaves, and oh, by the way, that nation is going to go on to become the wealthiest, most powerful and greatest nation in the history of the planet. Would you really have believed if one of our founders said that to you in the late 18th century? But that is who we are as Americans.

And I know there is a lot of rhetoric going around right now about immigrants and I am not accusing the Chair of participating in this, but there are some who irresponsibly delve into the bashing of immigrants. Unfortunately, that has also been around as long as the American Republic. Well, it was wrong then and it is wrong now.

So, to be clear, I am proud that we are a nation of immigrants. As the Congressional Budget Office has verified, immigration will add $7 trillion to our economy and lead to an additional $1 trillion in tax revenue over the next decade. Those countries and economies that are shrinking, particularly in Western Europe, wish they had the benefit of America's immigrants. It is sometimes said that America has an immigration problem. The countries that have an immigration problem are those countries to which no one wants to go. America does not have an immigration problem.

We do, however, let me be clear, currently have a real challenge on our southern border. No, this did not begin in this administration or the last several years. It actually began about 20 years ago during the George W. Bush Administration. 2004/2005 is when we first began to see a real surge at the southern border. Our peak year before COVID was 2019, a fact that some like to forget. Of course, once we hit March 2020, we had a dramatic drop of crossings at our southern border. Once the pandemic ended and America's economic, robust economy returned we have seen that surge reoccur.

So, we admit, there is bipartisan agreement, I think widespread agreement across America, we have a particular problem at our

southern border of illegal crossings. Now, some months ago, actually last September, President Biden and Senate Democrats worked with Senate Republicans, and over months and months of negotiations that were very difficult, in good faith, a bipartisan agreement was reached. It would have been the toughest and fairest set of reforms to secure the border in two generations. It would have provided $20 billion for border security, hired 1500 new CBP officers, and funded more than 100 additional immigration judges. That way, those claiming asylum could have had their cases heard right there, and the overwhelming majority of asylum cases tend to be rejected, and in those cases, those folks would have been returned to their country of origin.

It also would have provided the machinery that we need for better detection of fentanyl at ports of entry, a specific concern of mine. It would have given the President new authority to go after fentanyl traffickers, some of the worst of the worst, and it would have expanded legal pathways for migrants to work and support their families, those who are following the rules.

But what happened? Unfortunately, more than a few Republicans were more concerned with doing Donald Trump's bidding than they were concerned about fixing the problem. Donald Trump didn't want the border fixed because he wanted the issue. Now, don't take my word for it. Let us see what the leader of the Senate Republicans said, and I will quote him. That is Mitch McConnell. He said, "Trump didn't seem to want us to do anything at all." Another Republican Senator said Trump, "Doesn't want us to solve the border problem because he wants to blame Biden for it."

So, to quickly recap, step one, Republicans demanded a border deal. Step two, they negotiated a border deal. Step three, when Trump ordered them to, they killed that border deal, and finally, step four, here we are holding a hearing about how bad the border is. It is time to stop playing politics with this very important issue. Let us actually, finally get back to a bipartisan solution to fix this American challenge, and with that, I yield back.

[The prepared statement of Ranking Member Boyle follows:]

Ranking Member Brendan F. Boyle
Hearing on the Cost of the Border Crisis
Opening Remarks
Wednesday, May 8, 2024

Thank you Mr. Chairman, and like you, I thank the witnesses for taking time to be here today out of any of your busy schedules. I want to do a few things in my opening remarks.

First is to make clear how proud I am that we are, as President Kennedy once wrote in his book, a nation of immigrants.

More than 90 percent of the American people, myself included, are descended of immigrants. In my case, it's my father who came here from Ireland when he was 19 years old, looking for economic opportunity, as well as my mother's parents, who sailed here on the SS George Washington right after the Second World War.

Their story is like millions and millions of American families who worked hard, played by the rules, and in doing so were able to provide more opportunities for their children then they had themselves.

My family's been able to live the American dream. And you know, if you go back to the very beginning of the nation, almost 250 years ago in my district at Independence Hall in Philadelphia, if at that time you had said we're going to build a new country, but we're not going to build it of the elite or the affluent of Europe or any great power. No, this new country on this continent is going to be comprised by those who are on the bottom rungs of the ladder in societies where they come from. And we're also going to add on to that slavery and build the nation with slaves and then the descendants of slaves. And then oh, by the way, that nation is going to go on to become the wealthiest, most powerful and greatest nation on the history of the planet.

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Unfortunately, that has also been around as long as the American republic. Well, it was wrong then and is wrong now. So to be clear, I am proud that we are a nation of immigrants. As Congressional Budget Office has verified, immigration will add $7 trillion to our economy and lead to an additional $1 trillion in tax revenue over the next decade. Those countries and economies that are shrinking, particularly in Western Europe, wish they had the benefit of America's immigrants. It's sometimes said that America has an

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And I will quote him, that's Mitch McConnell, he said, "Trump didn't seem to want us to do anything at all." Another Republican Senator said Trump, quote, "Doesn't want us to solve the border problem because he wants to blame Biden for it."

So to quickly recap, step one, Republicans demanded a border deal. Step two, they negotiated a border deal. Step three, when Trump ordered them to, they killed that border deal. And finally, step four, here we are holding a hearing about how bad the border is.

It is time to stop playing politics with this very important issue. Let's actually finally get back to a bipartisan solution to fix this American challenge.

And with that, I yield back.

Chairman ARRINGTON. I thank the gentleman from Pennsylvania, and in the interest of time, if any other Member has an opening statement, I ask you to submit it for the record. We will hold the record open to the end of the day to accommodate those Members who may not yet have prepared written statements.

Once again, I would like to thank the witnesses for their time. The Committee has received your written statements. They will be made part of the formal record. You will each have five minutes to deliver your oral remarks. Ms. Kirchner, I yield five minutes to you.

STATEMENT OF JULIE KIRCHNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Ms. KIRCHNER. Thank you. Chairman Arrington, Members of the Committee, thank you for inviting me to speak today on the impact the border crisis is having on our nation. My name is Julie Kirschner, and I am the Executive Director of FAIR, the Federation for American Immigration Reform. With 45 years of experience and expertise, FAIR is a national nonprofit that seeks to educate Americans on the impact of mass immigration and to advocate for policies that serve our national interests.

For over three years now, Americans have been watching an unprecedented crisis unfold at our borders. So many illegal aliens are arriving that our immigration system is beginning to collapse under its own weight. The chaos is imposing record costs on Americans. Last year, FAIR published a report entitled the Fiscal Burden of Illegal Immigration on United States Taxpayers. The study strives to illustrate the myriad of ways Americans pay for illegal immigration.

Our estimate, which we believe is a conservative one, is that Americans now pay $150.7 billion annually due to illegal immigration. This figure represents a net cost. In terms of gross expenditures, we estimate that Americans pay $182 billion. Then, approximately $31 billion is received in taxes from illegal aliens, only 17 percent of the costs they create.

The high cost of illegal immigration is due to several factors. First, because illegal aliens usually have low incomes, those who do pay taxes pay little, if anything. Second, illegal aliens incur significant costs to the taxpayer on a daily basis because public services such as policing, K–12 education, and emergency services are provided universally. Further, due to loose eligibility criteria, intentional and otherwise, many illegal aliens receive benefits from Federal and state programs despite the fact that they have no legal status.

The majority of costs are incurred at the state and local level. The predominant cost for states is K–12 education. We estimate it costs Americans roughly $70 billion each year to educate children who either have no legal status or who are the U.S. born children of illegal aliens. The second highest cost to states is medical expenditures, which we estimate to be approximately $22 billion annually.

The impact of the border crisis is being felt acutely in both border states and destination states. We can look to New York City as a good example where over 180,000 migrants have settled and

30,000 migrant children have enrolled in New York City public schools. Mayor Eric Adams now anticipates the border crisis will cost $10.6 billion through the summer of 2025. The situation is being replicated in cities across the country, and these local costs for food and shelter and other costs that are not well documented are not incorporated into our report. This means that taxpayers are paying much more than we estimate.

But Americans need not be paying billions of dollars as a result of illegal immigration. This is a manmade crisis. From the moment the Biden Administration took office, it tore down all programs and policies designed to deter illegal immigration and began to release illegal aliens en masse. The Biden Administration has also proactively taken steps to help illegal aliens obtain benefits. This has been accomplished through a variety of means, but in particular, through illegal parole programs and the retroactive granting of temporary protected status.

Let us examine the administration's parole program for Cubans, Haitians, Nicaraguans, and Venezuelans. Many people don't realize that this program has an immediate and significant cost to taxpayers. Upon being paroled into the United States, these aliens, who have no legal status, immediately become eligible for work permits, Social Security numbers, Obamacare, and will be able to attain valuable tax credits such as the Earned Income Tax Credit and the additional Child Tax Credit.

On top of that, parolees are eligible for Federal benefits on the same terms as legal permanent residents. That means after a five-year waiting period, they may receive benefits under all the major Federal benefits programs: Medicaid, Social Security, Supplemental Security Income, Food Stamps, Temporary Assistance for Needy Families, and Federal Student Aid, and that is assuming they otherwise qualify. For Cubans and Haitians, however, the five-year waiting period is waived, waived by statute. So, that means that Cubans and Haitian nationals brought to the U.S. through the President's parole program are immediately eligible to receive all Federal benefits. This happens before they even file a tax return and despite the fact that they have no legal status.

Members of the Committee, over the past three years, between nine to ten million illegal aliens have been encountered at our borders. On top of that, approximately 1.8 million illegal aliens are counted as gotaways, and there is no end in sight.

If we do not reverse course now, if we do not change our current policies, the numbers will only grow and the costs will only increase.

Thank you, sir.

[The information follows:]

The Cost of the Border Crisis
Testimony before the House Budget Committee
May 8, 2024

Chairman Arrington, Members of the Committee, thank you for inviting me to speak today on the impact the border crisis is having on our nation.

My name is Julie Kirchner, and I am the Executive Director of FAIR, the Federation for American Immigration Reform. With 45 years of experience and expertise, FAIR is a national nonprofit that seeks to educate Americans on the impact of mass immigration and advocate for policies that serve our national interests, not special interests.

For over three years now, Americans have been watching an unprecedented crisis unfold at our borders. In the past fiscal year alone, we have seen a record number of illegal migrants encountered at our borders, a record number of suspected terrorists encountered, a record number of asylum claims – not to mention a record caseload in the immigration courts – and a record number of fentanyl seizures and overdoses. So many illegal aliens are arriving at our borders that our immigration system is beginning to collapse under its own weight.

This chaos is also imposing record costs on Americans. Last year, FAIR published a report entitled the *Fiscal Burden of Illegal Immigration on United States Taxpayers*. The study strives to illustrate the myriad of ways Americans pay for illegal immigration. Our estimate, which is a conservative one, is that Americans now pay $150.7 billion dollars annually due to illegal immigration. This figure represents a net cost. In terms of gross expenditures due to illegal immigration, we estimate that Americans pay $182 billion. Approximately $31 billion is received from illegal aliens in taxes, only 17 percent of the costs they create.

The fiscal burden of illegal immigration is due to several factors. First, because illegal aliens usually have low incomes, those who do pay taxes pay little, if anything. Second, illegal aliens incur significant costs to the taxpayer on a daily basis, because public services such as policing, K-12 education, emergency services, etc., are provided universally. Further, due to loose eligibility criteria – intentional or otherwise – many illegal aliens receive benefits from federal, state, and local jurisdictions, despite the fact that they have no legal status.

The majority of costs are incurred at the state and local level. The predominant cost at the state and local level is K-12 education of the children of illegal aliens, which costs taxpayers roughly $70 billion each year. This estimate covers the education of children with no legal status and U.S.-born children. The second highest expenditure for illegal aliens at the state level is medical expenditures, which we estimate to be approximately $22 billion annually. This figure includes costs attributable to uncompensated medical care, improper Medicaid payouts, Medicaid for citizen children of illegal aliens, and certain state laws that provide Medicaid coverage for illegal aliens.

What is clear from these numbers is that the impact of the border crisis is nationwide. It is being felt acutely in both border states and destination states. We can look to New York City as a good example, where over 180,000 migrants have settled and 30,000 migrant children have enrolled in New York City public schools. Mayor Eric Adams now anticipates the border crisis will cost the city $10.6 billion through the summer of 2025. While stunning to contemplate how a local jurisdiction could absorb so many people who have acute needs, little to no money, and lower education levels, this situation is being

replicated in cities across the country. These local costs for food and shelter, and other costs that are not well-documented, are not incorporated into our report. This means that taxpayers are paying much more than we estimate.

It does not have to be this way. Americans need not be paying billions of dollars as a result of illegal immigration. This is a man-made crisis. From the moment the Biden Administration took office, it tore down all programs and policies designed to deter illegal immigration. It immediately rescinded the Remain in Mexico policy and safe third country agreements, almost completely abandoned expedited removal, and began releasing illegal aliens *en masse* instead of detaining and deporting them as required by law.

Not only did the Biden Administration release the aliens *en masse*, it restricted enforcement policies so those aliens could not be apprehended in the interior. It dramatically curtailed ICE enforcement, attempted to institute a 100-day ban on deportations, left detention beds empty and failed to renew 287(g) agreements. The Department of Homeland Security even went so far as to declare that being inadmissible alone was not a sufficient reason to initiate deportation proceedings. The message was clear: there would be no consequences for illegal behavior. And, even if an illegal alien was put in removal proceedings, the Biden Administration saw to it that immigration judges could administratively close the case without deciding on the merits, letting illegal aliens walk out of court and carry on as if nothing had happened.

If that isn't bad enough, the Biden Administration has proactively taken steps to help illegal aliens obtain benefits. This has been accomplished through a variety of means, but in particular, through illegal parole programs and the retroactive granting of Temporary Protected Status (TPS). These programs and others that offer "lawful presence" but not legal status enable millions of illegal aliens to obtain work permits and Social Security numbers, and unlock the door to other benefits that Americans must shoulder.

To provide one example, let's examine the administration's parole program for Cuban, Haitians, Nicaraguans, and Venezuelans. Many people don't realize this program has an immediate and significant cost to taxpayers. Upon being paroled into the U.S., these aliens – who have no legal status – immediately become eligible for work permits, Social Security numbers, and Obamacare, and will be able to obtain valuable tax credits, such as the Earned Income Tax Credit (EITC) and the Additional Child Tax Credit (ACTC).

On top of that, parolees are eligible for federal benefits programs on the same terms as legal permanent residents. That means they immediately become "qualified aliens" under the law and after a five-year waiting period, they may receive benefits under Medicaid, Social Security, Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Federal Student Aid—assuming they otherwise qualify. For Cuban and Haitians, however, the five-year waiting period does not apply. That means that Cuban and Haitian nationals brought to the United States through the President's parole program are immediately eligible to apply for and receive benefits from all major federal benefits programs. This happens before they even file a tax return and despite the fact that they have no legal status.

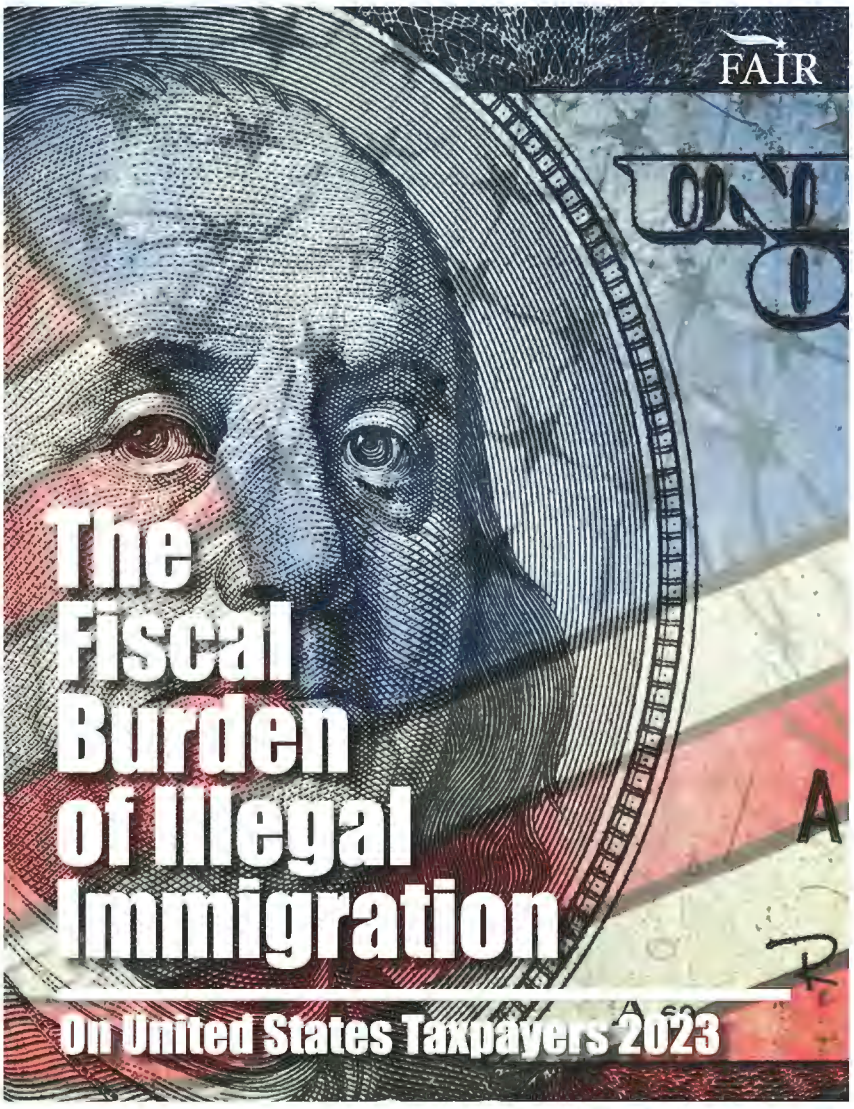
Members of the Committee, over the past three years, between 9-10 million illegal aliens have been encountered illegally crossing borders. On top of that, approximately 1.8 million illegal aliens have evaded Border Patrol agents and are counted as "gotaways." And there is no end in sight. If we do not

reverse course now, if we do not change our current policies, the numbers will only grow and the costs will only increase.

To demonstrate how these costs will grow, I had my staff do a rough calculation on the fiscal costs that will be incurred when all of the parolees who have arrived since the start of FY 2022 become fully eligible for federal benefits. Looking at only three programs, Medicaid, SNAP, and the Earned Income Tax Credit (EITC), and using all of the same assumptions as our current report, we estimate that the costs of illegal immigration will increase by $20 billion. *That means the gross costs due to illegal immigration will soon surpass $200 billion.* And this does not even include other federal benefits programs or state and local costs.

Supporters of the current open-borders policies often argue that nothing can be done. They cite unprecedented "global migration" forces as the cause. These forces are seemingly beyond anyone's control, they say, or that they can only be controlled by addressing the "root causes" of migration. This argument, however, only looks at push factors at work. It does not contemplate the much stronger pull forces ignited by the current policies. Just consider the case of Venezuela. The Maduro regime led 7.7 million Venezuelans to leave their country since 2014 and search for a better life. However, about 84 percent of those who left Venezuela since 2014 first settled in neighboring Latin American countries. Mass migration to the United States did not begin until 2021, when open-borders policies were implemented.

In reality, the true "global forces" driving the current wave of illegal immigration over our borders are the open-borders policies of the current administration. This crisis can be stopped. We urge Congress to step in and return our immigration system to a lawful, orderly one that places the interests of Americans first.


FAIR
The Fiscal Burden of Illegal Immigration
On United States Taxpayers 2023

The Fiscal Burden of Illegal Immigration

On United States Taxpayers 2023

A FEDERATION FOR AMERICAN IMMIGRATION REFORM RESEARCH REPORT

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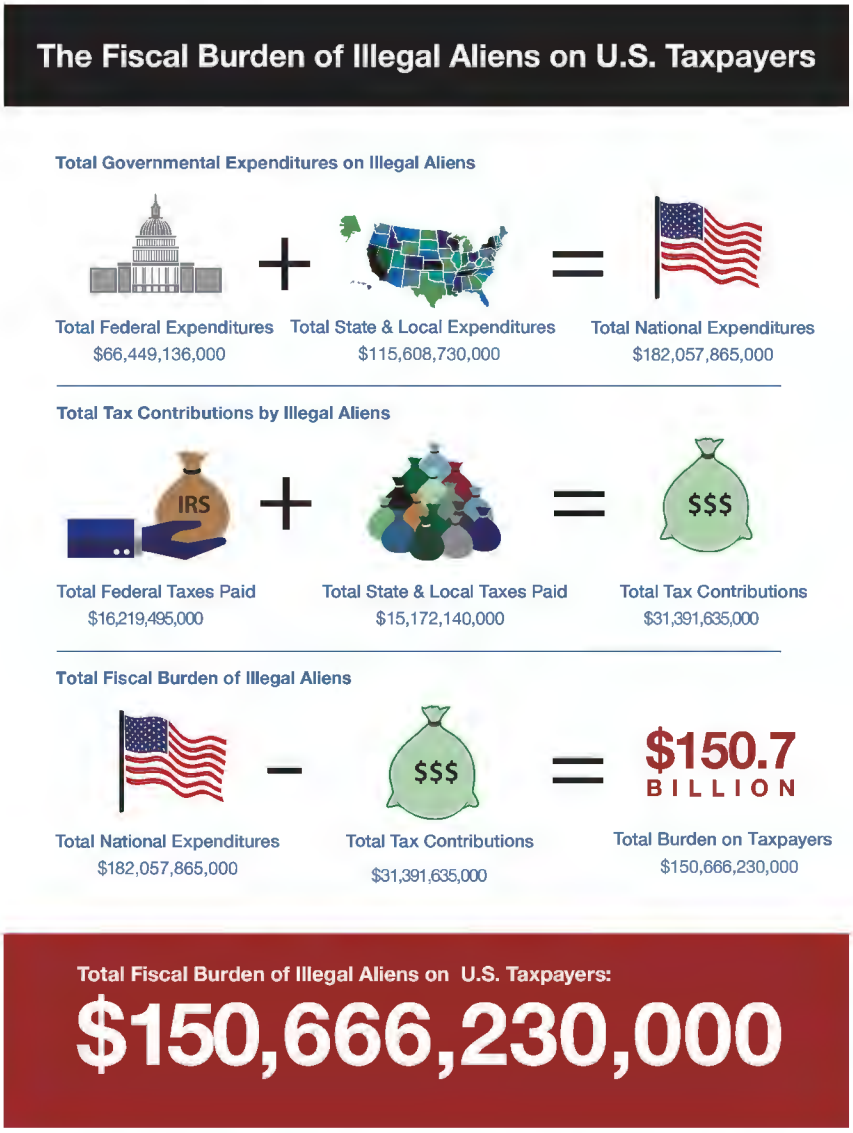
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Introduction

This report is currently the only comprehensive examination of the financial impact of illegal immigration in the United States. Every day, hundreds of millions of dollars in American taxpayer money are spent on costs directly associated with illegal immigration. Only a small fraction of these costs is ever recouped from taxes paid by illegal aliens, with the rest falling on the shoulders of American citizens and legal immigrants.

Our aim in this report is to show the American people the fiscal burden of illegal immigration at every level and across nearly all aspects of life. These costs range from emergency medical care to in-state tuition; from incarcerating illegal aliens in local jails to federal budgets that pay out billions in welfare every year. Because there are so many different ways that money is spent on illegal aliens at both the state and local levels, the information in our report is otherwise hard to find (or even intentionally hidden). This report supersedes FAIR's 2017 cost study[1] and highlights massive increases in spending related to illegal immigration that were implemented while American citizens deal with an uncertain economy.

Why does this matter?

Put simply, almost all expenses associated with illegal immigration are preventable. Illegal immigration's annual net burden on the economy, now more than $150 billion, is greater than the annual GDP output of 15 U.S states.[2] There is a strong correlation between the security of America's borders and the rate at which the cost of illegal immigration increases. With proper border controls and the enforcement of laws already on the books, the cost of illegal immigration would be greatly reduced.

The period since FAIR's last fiscal burden study in 2017 has not been easy for the American people. A global pandemic and economic disruptions have drastically raised the prices of necessary goods and services, and has contracted the jobs market so that many citizens remain without gainful employment. Because these factors are also global, the U.S. remains a magnet for foreign nationals who wish to compete for the jobs and benefits that American citizens rely on. While millions of Americans are struggling to put food on the table and hold gainful employment, we believe they deserve to know where their federal, state, and local tax dollars are going.

Overview

This report examines the annual fiscal impact of illegal aliens on at both the federal and state levels. FAIR used the most recent data available and accounted for new programs and legislative/policy developments up to the end of 2022. Significant temporary spending related to illegal immigration, like aid programs during the COVID-19 pandemic, also took place during the study period. While we do highlight COVID-related costs, they are not included in our overall totals because of their temporary nature, and this report strives to paint a picture of more static costs.

This project contains extensive analysis of both federal and state/local spending on many fronts, reflecting the nationwide scope of illegal immigration. From public schooling and postsecondary education programs, to welfare and healthcare costs, we account for as many known costs as possible. This wide scope is important, as the highest costs often occur outside of traditional illegal alien destinations.[3]

In total, the gross cost of illegal immigration now total $183 billion, up more than 35.7 percent since 2017. The cost incurred per illegal alien (including their U.S.-born children) has increased as well, now totaling $8,776 annually.

Because this report covers the full fiscal impact of illegal immigration, it also includes the contributions of illegal aliens to the economy. These include tax payments made directly to state and local jurisdictions, the federal government, as well as excise, property, and sales taxes. However, these receipts fall far short of covering the expenses incurred due to illegal immigration. Taxes paid by illegal immigrants only covered around 17.2 percent of the costs they created for American citizens.

When the taxes paid by illegal aliens are factored in, the net cost of illegal immigration to U.S. taxpayers is now $150.7 billion. This means that each American taxpayer shells out a net average of $956 (or $1,156 before the taxes paid by illegal aliens are factored in) due to illegal immigration.[4]

What's Changed

Since our 2017 report, the immigration landscape has shifted significantly. The Trump administration engaged in an aggressive approach towards combatting illegal immigration, which increased spending on security but also tempered the growth of other federal expenses tied to illegal immigration. However, even this slower growth was offset by an increase in states expanding programs available to illegal aliens like in-state tuition and certain medical benefits. In many cases, these expansions were a reaction to those administration policies, but they have continued to broaden in scope under the Biden administration.

Currently, under the Biden administration, the U.S. is experiencing a full-fledged migration crisis. The

illegal alien population is expanding rapidly after drastic cutbacks to border security, with monthly encounters hitting all-time highs. The administration is now attempting to redirect additional border security funding to expand migrant processing initiatives that have, so far, only spurred additional illegal immigration. Another new program is set to allow tens of thousands of illegal aliens to fly directly into the United States monthly under "humanitarian parole."

This self-imposed crisis is only driving the costs associated with illegal immigration even higher. States like Texas and Arizona have been forced to spend huge sums to compensate for reduced federal law enforcement presence on the border. Meanwhile, the federal government and states like California and New York alike are increasing illegal alien access to taxpayer-funded benefits.[5] Various policy shifts have made it harder to obtain data on these increases in spending from the federal government, but FAIR has exhaustively analyzed the effects of our ongoing illegal migration crisis in this report. The net result has been a sharp increase in the fiscal costs of illegal immigration under the Biden administration that shows no signs of slowing down.

A Note on the Lack of Transparency in Government Data Reporting

Information transparency is essential to good governance. It encourages a well-informed citizenry to hold their elected officials responsible and motivates those officials to implement policies that benefit their constituents instead of special interest groups. Furthermore, citizens have the right to know pertinent information, presented in a clear and comprehensible manner, on issues that impact them. Unfortunately, there is a concerning lack of transparency and openness when it comes to the issue of illegal immigration.

While preparing this study, we often had to grapple with a paucity of easily accessible official data. Many state and federal entities do not publish detailed data that they collect, making it difficult to reliably separate illegal aliens from citizens or lawful immigrants in many of the fields covered in this report. We have also encountered cases where the current administration has revoked or restricted documents published by previous administrations in order to reduce the visibility of data which shines a negative light on their immigration policy agenda. Extremely helpful publications like the Alien Incarceration Report, which documented foreign criminals in custody in the United States, are no longer updated under the Biden administration. This kind of subtle de facto censorship is highly unethical and does not serve the interests of the American public.

Thankfully, we were able to find most of the necessary information to complete this study by analyzing existing databases and publications from the federal and state/local governments as well as other reputable organizations and academic institutions. However, as is noted throughout this report, there were a few instances where we were unable to obtain enough data to make reliable estimates. For

example, illegal immigration imposes a significant direct cost on the United States in the form of gang-related crime and trafficking of drugs and humans, but thanks to jurisdictional differences and "sanctuary" policies that protect criminal illegal aliens in many states or localities, this cost often remains a "known unknown." For other topics, like post-secondary education, we had to stitch sources together and create new methodologies in order to calculate our estimates because, while the relevant data is tracked, it is fragmented across different sources.

So, why are Americans being kept in the dark? Primarily because the political and ideological influence of the open-borders lobby, both within and outside the federal government, holds significant sway over the Biden administration and many state governments. This "hear nothing, see nothing, say nothing" attitude is rooted in the hope that if the American public doesn't have easy access to valid information regarding the impacts of illegal immigration, they will accept the lie that no problem exists.

In carrying out this study, FAIR is advancing the belief that the American people have a right to transparent and accurate information so that they are fully informed of what is occurring in their country and how much it costs them.

Summary of Methodology

FAIR made every effort to source the data in this report from government agencies and testimony from government officials, using these as the foundation of our estimates. When official data is unclear or unavailable, FAIR looked to research generated by credible, non-partisan organizations and academic institutions. On the rare occasions that a calculation must be estimated and/or assumed, we offer a detailed reasoning for the estimation so that readers can examine the relevant information and judge our conclusions for themselves. For the sake of maximum accuracy, we have noted various areas where we believe it is impossible to estimate a cost.

Throughout this study, we have taken caution to never overestimate totals, and have chosen to err on the lower side of cost estimates, and the higher side of tax contributions, when our calculations resulted in a range instead of a static figure. We do this to ensure that our cost figures do not extend beyond what the evidence can empirically prove. Combining this with the fact that there are some costs that cannot be reliably estimated, it can be safely assumed that the actual cost of illegal immigration is considerably higher than the final tally offered here. Given current trends – rapidly increasing illegal immigration, increased federal and state government spending, inflation, and the fact that numerous state benefits are set for expansion to unauthorized migrants – the fiscal burden of illegal immigration is sure to grow even higher in the near future.

Every effort was made to find and utilize the most recent data available as a basis for calculations; thus, the majority of the data is drawn from sources covering between fiscal years (FY) 2020 and 2022. However, the COVID-19 pandemic, and the massive government spending binge it caused, complicated our calculations. In cases when spending on various programs was sharply but temporarily increased during the pandemic, we preferred to utilize pre-pandemic data and adjust accordingly for inflation and/or other developments in order to paint a more accurate picture of the static costs. We do not include pandemic-related spending measures unless they were enacted as permanent programs. However, we make a point to highlight these costs in their relevant sections so that readers are aware of their impacts.

An essential part of our calculations relies on FAIR's latest illegal alien population estimate, which is 15.5 million (20.9 million when the U.S.-born children of illegal aliens are included) as of the beginning of 2022.[6] Our estimate is higher than those offered by most mainstream immigration research organizations, most of which stick to the oft-repeated "10-11 million" figure, despite record illegal immigration over the past couple of decades and even further surges over the past few years. Most mainstream estimates fail to take into account the constant rate of growth in this demographic, overestimate the outflow rate of illegal aliens, and/or have deceptively lowered the rate at which they believe the U.S. Census Bureau undercounts illegal aliens. Moreover, for ideological reasons, many groups also misclassify the increasing influx of unaccompanied alien minors (UAMs), Temporary Protected Status (TPS) recipients, Deferred Action for Childhood Arrivals (DACA) beneficiaries, and parolees as being in the United States "legally." This is a dishonest characterization because such individuals have not received any lawful immigration status. Rather, these illegal aliens have merely received temporary and discretionary reprieves from removal and lack a clear pathway to citizenship.

Finally, it's important to note that FAIR includes costs incurred by the minor, U.S.-born children of illegal aliens, as these costs are fully attributable to their parent's unlawful residence in the United States. Many mass-immigration apologists claim that this is an unfair inclusion, as the estimate does not include any long-term contributions made by these minors once they become adults. However, further research has demonstrated that the children of migrants – especially illegal aliens – no longer see significant economic improvement as was the case several decades ago.[7] Therefore, if we did attempt to account for their future tax contributions, we would also need to account for their reliance on state and federal benefits programs. This would likely only serve to increase our cost estimates further, not drastically lower it as many open border advocates insist.

Part I: Federal Expenditures and Receipts



Federal Education Costs

Education

Primary and Secondary Education (Title I-A) **$3,020,696,000**

The "Every Student Succeeds Act" Title I, Part A (ESEA Title I-A) provides for grants of supplemental federal funding to increase educational opportunities for and improve the academic performance of children from low-income families, among whom illegal aliens and their children are disproportionately represented. Approximately 47 percent of all K-12 students in the country qualify for these grants either individually or on a schoolwide basis.[8] In 2022, just over $17.5 billion was budgeted for this program.[9] Based on FAIR's income profile for illegal aliens, the vast majority of the children of illegal aliens will fall within the economic eligibility criteria applicable to this program.

FAIR estimates that as of 2022, after years of unprecedented illegal immigration and a surge in unaccompanied minors arriving in the United States, approximately 5 million K-12 students in the United States are illegal aliens or the children of illegal aliens.[10] Furthermore, this population is heavily overrepresented among Title I-A recipients due to their families' lower income levels, comprising nearly 20 percent of total recipients by our estimates. Using calculations based on this proportion and the program's overall budget, FAIR estimates that approximately $3 billion is spent annually on Title I-A grants to K-12 students linked to illegal immigration.

Limited English Proficiency (LEP) – Title III **$580,895,000**

The federal government provides Title III-A grant funding to the states based on census data on school-age limited English proficiency (LEP) youth. This funding is dedicated to improving English-language acquisition for students whose native language is not English. According to U.S. Department of Education data, $831,400,000 was allocated in FY 2022 in support of supplemental English language instruction.[11] Of that amount, $764,335,990 was distributed to states based on the number of English learners in their schools.

In FAIR's recent report on education, we estimated that in 2020 approximately 3.6 million LEP students in American schools were either illegal aliens or the children of illegal aliens.[12] Due to unchecked illegal migration and the arrival of unprecedented numbers of unaccompanied minors, we now estimate that the number of students connected to illegal immigration has increased to approximately 3.8 million.[13] This represents 76 percent of LEP students in the U.S. Based on the per-student costs detailed in our aforementioned study on education, it can safely be estimated that illegal aliens and their children account for almost $581 million in Title III-A funding in FY 2022.

Migrant Schooling (Title I-C) **$239,418,000**

The Migrant Education Program (MEP) was established in 1966 as part of the Elementary and Secondary Education Act. Its goal is to help migrant students who move between different areas inside of the United States regularly during the year receive an adequate education and meet academic standards. These students often face challenges to learning because they may interact with inconsistent curricula and are not settled long enough to meaningfully engage with their schools. The federally appropriated funds for this program were $423,749,000 in FY 2022.[14]

The U.S. Department of Education indicates that the primary beneficiaries of the MEP program are "the children of migrant agricultural workers and fishers."[15] The majority of migrant agriculture and fisheries workers are illegal aliens — approximately 56.5 percent — according to a study conducted by the Pew Research Center.[16] Therefore, using these assumptions as a basis for our methodology, FAIR estimates that approximately $239,418,000 of the MEP budget goes to educating the children of illegal aliens.

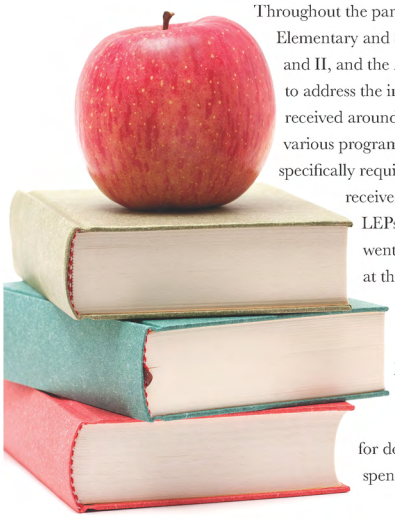
Head Start **$2,768,080,000**

The federal Head Start and Early Head Start programs combine federal funding ($11.037 billion budgeted for FY 2022) with local matching funds. There is little data on the exact enrollment of illegal-immigration-connected participants in these programs, but children with a non-English home language make up at least a third of total Head Start enrollment.[17] In FAIR's most recent study of education

costs, we determined that approximately 76% of LEP students in primary and secondary education nationwide are the children of illegal aliens. While illegal alien participation in Head Start is likely to be somewhat lower because of a general reluctance to engage with federal aid programs in many cases (as noted elsewhere in this report), this is counterbalanced by a higher poverty rate that increases the likelihood they will be eligible. Using a conservative estimate that the proportions are the same for illegal alien households with children, which correlates with the generally low English proficiency rates of illegal aliens, we estimate that around 25% of Head Start enrollment pertains to the children of illegal aliens. This means that the total federal Head Start expenditures attributable to illegal immigration are well over $2.7 billion.

COVID-19 Relief Funds

The use of pandemic relief funds for illegal aliens and their children in schools was also noted in FAIR's recent report on the excessive costs that bilingual education imposes. The COVID-19 pandemic had particularly heavy impacts on LEP students, the vast majority (76 percent) of whom are illegal aliens or the children of illegal aliens. Most LEPs do not have an English-speaking home environment to maintain their limited skills during periods of online schooling. As a result, school districts across the country were burdened with dedicating millions of dollars of COVID-19 relief funds to special bilingual/LEP programs that do not serve the general student population.



Throughout the pandemic, Congress passed three different relief packages: the Elementary and Secondary School Emergency Relief (ESSER) Fund packages I and II, and the American Rescue Plan (ARP). These programs awarded grants to address the impact of pandemic shutdowns on schools.[18] In total, schools received around $189.5 billion, an unprecedented level of federal spending, for various programs. The ARP ESSER funds for education, totaling $122 billion, specifically require states to set aside 5 percent, and districts 20 percent, of the received funding for "most affected students," specifically mentioning LEPs multiple times.[19] This means a huge allocation of limited funds went to assisting LEP students, mostly the children of illegal aliens, at the expense of taxpayers.

In addition, many districts spent large chunks of discretionary relief funding on services specifically for LEP students. Fairfax County Public Schools in Virginia, for example, spent $2,681,449 of ARP funds on LEP-specific services with no relevance to the general student population.[20] The same is true for dozens of other school districts as well. The total cost of this relief spending giveaway for illegal aliens is split across thousands of school

districts that compile budgets in different ways and is likely incalculable. If ascertained, however, it would likely be included as one of the single largest education-related costs of 2020 and 2021 that illegal aliens imposed on the American taxpayer. Since it is impossible to decipher to what degree funds were used for the education of illegal aliens, and since these are not regular annual expenses, we do not ascribe a total to this cost. However, it is something worth noting as it certainly resulted in a temporary – but significant – burden on U.S. taxpayers.

Total Federal Educational Expenditures:	
Primary and Secondary Education - Title I-A	$3,020,696,000
Limited English Proficiency (LEP) - Title III	$580,895,000
Migrant Schooling (Title I-C)	$239,418,000
Head Start	$2,768,080,000
Total	$6,609,089,000



Federal Medical Costs

Medical Costs

Most (but not all) illegal aliens are, as a matter of law, barred from receiving welfare benefits through targeted aid programs that are jointly administered by states and the federal government. This bar was put in place by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).[21] The PRWORA states that "aliens who are not qualified aliens" are ineligible for "federal public benefits" and for "state and local public benefits." The act defines a qualified alien as any immigrant "who is lawfully admitted for permanent residence under the Immigration and Nationality Act," or who meets at least one of several other exceptions listed in Section 431 of the Act. These exceptions cover many people who are unlawfully present in the United States but have been granted deferred action through programs such as parole with a set term of at least one year, TPS, and several other categories.

In addition, many states still provide subsidized healthcare services to illegal aliens (more on these programs can be found in the part of this report that covers state healthcare). These programs technically do not violate the terms of PRWORA if they are solely funded by state taxpayers. However, the diversion of state taxes into these types of programs often result in larger state requests for federal budget assistance, as including low-income illegal aliens often make states eligible for additional federal

grants. Much of this assistance is provided in the form of supplemental healthcare funding distributed to state providers.

Medicaid is a joint federal and state program that provides healthcare coverage to children, pregnant women, senior citizens, and individuals with disabilities, among others. While most illegal aliens are technically excluded from full Medicaid programs, they may still receive Medicaid coverage for prenatal and obstetric care. These services are provided based on the idea that the unborn child, rather than the illegal alien mother, is the one receiving medical treatment. In addition, under the current interpretation of the 14th Amendment to the Constitution, the U.S.-born children of illegal aliens are natural-born U.S. citizens. Quite often, they are also considered "targeted low-income children" eligible for Medicaid and other federal medical assistance programs.

Finally, it is unclear if the thousands of illegal aliens paroled into the country by the Biden administration will become eligible for Medicaid and other federal benefits. Paroled illegal aliens can receive certain benefits if the terms of their release is for a period of at least one year, but there is little information on whether these parolees from the border are receiving any set term lengths at all, and what federal benefits are being extended to them.

Uncompensated Hospital Expenditures **$8,153,000,000**

In 2017, the federal outlay to help cover uncompensated care provided to uninsured individuals was approximately $21.7 billion annually. Assuming these reimbursements occur at a similar rate today, that accounts for approximately $26.3 billion.[22] The national uninsured population of all ages was 26.4 million in the first quarter of 2022.[23] According to a 2019 estimate from the Migration Policy Institute, a little over half (53 percent) of the illegal alien population in the United States is uninsured.[24] This proportion would suggest, according to FAIR's most recent estimates of the Illegal aliens population, that roughly 8.2 million of the illegal aliens currently in the country do not have insurance coverage, making up approximately 31 percent of the total uninsured population.[25] If uninsured illegal aliens are assumed to require healthcare at a rate similar to other uninsured persons, they would make up approximately $8.2 billion of the uncompensated hospital expenditures in the United States.

Medicaid Births **$1,596,902,000**

After rising rapidly since the 1980s, births to illegal alien mothers dropped along with the overall birth rate during the Great Recession (2008-2010). Since then, the numbers have held relatively steady. The Center for Immigration Studies (CIS) estimated that in 2014, illegal alien mothers in the U.S. gave birth to 297,000 children, or 7.5 percent of total births.[26] In 2020 (the most recent year for which statistics are available), foreign-born mothers accounted for 22 percent, or 790,041, of the nationwide total of about 3.6 million births.[27]

Medicaid paid for 42 percent of all births in 2020.[28] However, a study published in 2018 found that 48 percent of foreign-born women had their births paid for by Medicaid, compared with 42 percent of native-born mothers.[29] This would mean that Medicaid covered the costs of approximately 377,000 births (48 percent) to foreign-born mothers. The cost of those births is shared between the federal and the state taxpayer. The total cost depends on the type of delivery and whether complications occur.

We assume that the birthing costs incurred by illegal alien mothers will be roughly similar to legal immigrant and native mothers. According to past medical research conducted in Colorado, illegal alien mothers "have lower rates of pre-term delivery and low birth weight infants, but higher rates of pregnancy related risk factors." These risk factors are offset by other factors, such as illegal alien mothers consuming less tobacco and alcohol than the national average, lower hypertension rates and other factors.[30] Based on the birth rates observed in the Colorado study, this indicates that roughly 201,960 (68 percent) of current illegal alien births were natural, and 95,040 (32 percent) were surgical. Again, these rates suggest that the average costs for illegal aliens will be similar to the overall national average.

The federal share of the expenditure varies among states, averaging out to approximately 63 percent overall. Thus, to determine the cost of illegal aliens using Medicaid to fund births, we remove the percentage of illegal aliens believed to have some form of health insurance, which is approximately 47 percent. The uninsured remainder comes out to 157,410 births — 107,038 naturally, and 50,371 by surgical intervention. With natural births costing $13,024 on average and surgically-assisted births averaging $22,646, the total, combined state and federal expenditure for obstetric medical costs is approximately $2,534,764,578.[31] With 63 percent of these costs being covered by the federal government, the total federal cost comes out to $1.6 billion.

This estimate is certainly on the conservative side of reality. In 2007, a report in the *Journal of the American Medical Association* found that "... a little-known part of the state-federal health insurance program for the poor," known as Emergency Medicaid, "pays about $2 billion a year for emergency treatment for a group of patients who, according to hospitals, mostly comprise illegal immigrants. Most of it goes to reimburse hospitals for delivering babies for women who show up in their emergency rooms, according to interviews with hospital officials and studies."[32] A portion of this expenditure is attributable to the $1.6 billion Medicaid spends on illegal alien births. However, there is little recent data regarding what percentage of that $2 billion expense covers emergency obstetrical services for illegal aliens (given both inflation and increased Medicaid spending since then, this figure is certainly much higher now). Without further data, FAIR is unable to estimate a reliable value for this additional expenditure.

Improper Medicaid Payments **$7,997,566,000**

The total amount of improper Medicaid payouts in the United States during FY 2022 was approximately $80.6 billion, or 15.6 percent of total outlays.[33] By contrast, Medicaid Fraud Control

Units (MFCUs) were able to recover only $1.7 billion in FY 2021 (when improper payments were $99 billion, 22 percent of total outlays), around 1.7 percent of the total improperly paid.[34]

Assuming that uninsured illegal aliens receive improper Medicaid payouts and/or commit Medicaid fraud at the same rate as U.S. citizens — a very conservative estimate, considering illegal aliens are both more likely to commit document-related fraud and have greater incentive to commit Medicaid fraud — there would be approximately 1,284,508 illegal aliens receiving improper Medicaid payouts each year. The average improper Medicaid payout per-person comes out to approximately $6,226, meaning the overall annual total loss attributable to illegal aliens is approximately $8 billion.

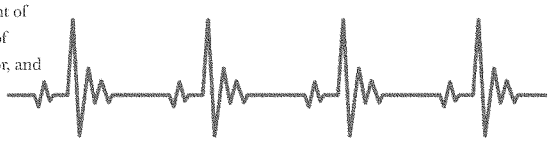
Medicaid for U.S.-born Children of Illegal Aliens **$5,385,007,000**

U.S. citizens and Lawful Permanent Residents (green card holders) are eligible for Medicaid benefits; therefore, the U.S.-born children of illegal aliens are eligible for Medicaid. While these children were born in the United States, they would not be present in the United States had their parents not entered the U.S. illegally or overstayed a visa. These children are typically classified as low-income (see FAIR's income profile of illegal aliens in this report). Because of this, they represent a significant burden on the U.S. Medicaid program.

There is a strong correlation between uninsured status and low income.[35] The vast majority of uninsured people in the United States are low-income earners, for the simple reason that it is more difficult for low-income individuals to afford health insurance and low-wage jobs are likely to offer fewer health benefits.[36] Therefore, low-income families depend more on government healthcare programs to pay for any medical treatment that they require.

Per federal guidelines, in order to be eligible for Medicaid on the basis of low income, children must be members of a family earning an income less than 138 percent of the federal poverty level (FPL). States have the option to extend Medicaid coverage to those whose income is too high to qualify under federal guidelines, but most states have set their guidelines at 138 percent of the FPL.[37] The average family headed by an illegal alien falls around or below the FPL, and therefore their U.S.-born children will be eligible for Medicaid. Many other illegal aliens are likely utilizing various methods of fraud to improperly obtain Medicaid, as regularly occurs with other federal benefit programs.

At least 53 percent of illegal alien households are uninsured, meaning that approximately 2.83 million U.S.-born children of illegal aliens are without insurance.[38] Based on the foregoing evidence, FAIR estimates that approximately 75 percent of these 2.83 million U.S.-born children of illegal aliens (2.1 million) are eligible for, and receiving, Medicaid as members of



low-income households, a similar rate to households with a non-illegal head of household. This accounts for the few illegal alien families whose income is in fact too high to qualify, as well as others who avoid interacting with federal programs to maintain a low profile.

Per the Medicaid and CHIP Payment and Access Commission, average Medicaid spending per enrolled child in 2020 was $3,500.[39] Adjusted for inflation, the total today is now around $4,030. This would make the annual Medicaid spending on the U.S.-born children of illegal aliens about $8.5 billion. The federal share of that expenditure (63 percent) is about $5.4 billion annually, with the remainder being a cost borne by the states (see the state and local portion of this report for those totals).

Affordable Care Act (ACA)

The ACA allows for eligible individuals to apply for various levels of federally subsidized healthcare, depending on their annual income. While most illegal aliens do not qualify for coverage under the ACA, some with certain designations and deferments do. These categories include those with TPS, Deferred Enforced Departure (DED), Deferred Action Status (other than DACA), victims of trafficking, some asylum applicants, and several other categories.[40]

Data is lacking on exactly how many individuals fall into each of these categories. However, when taking maximum estimates from various immigration agencies and organizations, it is estimated that somewhere between 500,000 and 1 million illegal aliens fall into an immigration category covered by the ACA. Unfortunately, without more information regarding the total number of illegal aliens that qualify for coverage along with their income levels, family size, and/or participation in other programs covered by this report, it is impossible to estimate how many illegal aliens participate in the ACA, and what level of federal subsidy they receive. However, this number is almost certainly substantial, and the federal government should be reporting the extent to which those who entered the country illegally participate in this program.

Total Federal Medical Expenditures	
Uncompensated Hospital Expenditures	$8,153,000,000
Medicaid Births	$1,596,902,000
Medicaid Fraud	$7,997,566,000
Medicaid for U.S.-born Children of Illegal Aliens	$5,385,007,000
Total	$23,132,475,000



Federal Justice Costs

Justice Enforcement

Immigration enforcement constitutes a significant portion of the overall federal law enforcement budget. Because every crime committed by an illegal alien is inherently a preventable crime, immigration has a broad effect on justice expenditures beyond the costs directly involved in securing the borders and managing ports of entry. Therefore, this report separates federal immigration enforcement expenditures into two categories: 1) the cost of securing the border, managing ports of entry, and processing/removing immigration violators from the interior; and 2) the cost of prosecuting/incarcerating federal criminal aliens and subsidizing state and local law enforcement expenses connected with illegal immigration (e.g., housing illegal aliens in local jails, information-sharing costs, etc.)

Most of these expenditures cannot be eliminated as long as the United States remains the most common destination for illegal migrants. However, many of them could be drastically reduced by the construction of a functional border barrier, the implementation of effective deterrents to illegal immigration, and the comprehensive detention and removal of criminal aliens living in the United States. In addition, the refusal of many countries to accept their own citizens when they are deported from the United States also increases costs to the American taxpayer.[41]

Federal Incarceration **$1,670,374,000**

The illegal alien population consists of both those aliens who entered the United States without authorization and those who entered the United States lawfully but overstayed their authorized period of stay. Illegal aliens are subject to removal from the United States simply because they are present in the United States without authorization. However, many illegal aliens come to the attention of DHS only when they are arrested for the commission of a crime.

Legal immigrants are also subject to deportation if convicted of certain crimes. However, data indicates that these immigrants tend to commit crimes at a lower rate than illegal aliens.[42] This is unsurprising since the very concept of illegal immigration requires a certain level of disrespect for the laws of the destination country. We include costs of incarcerating legal immigrants if their convictions are likely to lead to the loss of their immigration status.

Illegal aliens who come to the U.S. for economic gain often commit crimes such as identity theft or using fraudulent documents to work illegally, unlicensed driving, tax evasion, and/or unlawfully obtaining public benefits. Moreover, many illegal aliens cross the border without authorization specifically for the purpose of engaging in criminal activity within the U.S., such as drug and human trafficking. Conversely, legal immigrants have a greater incentive to avoid criminal behavior due to the possibility of losing their hard-earned legal status if convicted.

The majority of illegal immigrants who are convicted of crimes are prosecuted in state courts and confined to state correctional facilities to serve out their sentences. These expenses are addressed in the section of this report covering the state costs of illegal immigration. By contrast, the population of foreign-born individuals incarcerated in Federal Bureau of Prisons (BOP) facilities tends to include more illegal aliens than foreign-born populations incarcerated in state prisons.[43] This is because the federal government has exclusive jurisdiction over immigration-specific crimes. Therefore, both legal and illegal migrants convicted of criminal violations of the INA are confined to federal prisons. Illegal aliens who have been taken into custody by the federal government and placed in deportation proceedings will also be held in federal detention facilities. Both BOP and ICE maintain such facilities. This section addresses BOP costs as well as costs borne by the US Marshals Service (USMS), which detains many illegal aliens before trial and before sentencing. The following sections on ICE expenditures include the costs of detaining aliens in facilities owned and operated by that agency.



BOP statistics indicate that by the end of 2022, the number of alien inmates in BOP custody is 25,608, a number that has been slowly increasing since many prisoners were released during the COVID-19 pandemic.[44] A 2019 report by the Department of Justice estimates that 94% of alien inmates in BOP custody have no claim to lawful status.[45] The cost to incarcerate federal inmates has increased markedly in the past few years, with the FY 2020 figure of $39,924 per inmate being an approximate increase of $4,500 from the previous fiscal year.[46] While the COVID-19 pandemic has delayed the release of the most recent statistics on the cost of incarceration, generously assuming a similar figure to FY 2020 would imply annual costs of over $1 billion for alien BOP inmates alone.

The USMS also incurs significant costs related to illegal aliens because they are responsible for much of federal pre-trial and pre-sentencing detention. While USMS custody is more short-term, it also sees much higher annual numbers than the BOP. Approximately 37 percent of individuals in USMS custody at any given time are illegal aliens, with 98 percent of that group being criminal illegal aliens.[47] This high percentage of illegal aliens in USMS custody and USMS's consistent custody numbers year-over-year translate to approximately $648 million in annual spending on custody and transportation for illegal aliens.

Enforcement and Removal Operations (ERO) **$4,118,902,000**

The branch of DHS responsible for interior enforcement of the Immigration and Nationality Act is U.S. Immigration and Customs Enforcement (ICE). Within ICE, the office most directly involved in the arrest and deportation of illegal aliens is the Office of Enforcement and Removal Operations (ERO). ERO is responsible for apprehending illegal aliens and placing them in removal proceedings, detaining aliens who are a flight risk, and effectuating the removal of aliens ordered deported by U.S. immigration courts or federal district courts. To accomplish its mission, ERO works with state, local, and other federal law enforcement agencies to identify and process illegal aliens. This includes lodging "detainer" requests with state and local agencies to ensure that criminal illegal aliens are transferred into DHS custody, especially when those jurisdictions have entered into 287(g) agreements with ICE that allow local and state officers to assist with immigration law enforcement.[48]

ERO also liaises with the Federal BOP to ensure that illegal aliens being held for ICE pending immigration hearings are processed appropriately. In addition, ERO works with BOP to make sure that illegal aliens incarcerated for federal crimes are promptly deported when their sentences are completed. ERO activities incur a broad range of annual expenses, including holding aliens in DHS-operated detention facilities, or leased facilities. The FY 2021 budget for ERO was about $4.11 billion, and it is appropriate to attribute the entirety of this budget to combating illegal immigration.[49]

Customs and Border Protection (CBP) **$8,565,574,000**

U.S. Customs and Border Protection (CBP), another DHS agency, is responsible for securing the borders of the United States and managing land, sea, and air ports of entry. CBP acts as the first line of defense against illegal entry, alien and drug smuggling, and human trafficking. A large portion of CBP's responsibilities relates directly to detecting, deterring, and prosecuting illegal immigration.

CBP is also responsible for the trade management, impost collection, licensing and enforcement duties that were handled by the U.S. Customs Service prior to the formation of DHS. Therefore, we must determine which costs relate to trade management and impost functions and which arise directly from border security functions.

Breaking down the enacted FY 2022 budget by component, Congress directly appropriated a total of $8,565,574,000 for the components of CBP involved in border security, which is effectively everything outside of the CBP Office of Trade.[50] This large figure reflects the scale of the border crisis and its continuous growth. The FY 2023 President's Budget, which is essentially the administration's wish list, would eliminate appropriated border wall funding but ultimately increase the border-related spending total above $9 billion if enacted because of the demands illegal immigration imposes on CBP.

Other ICE Operations **$1,715,897,000**

ICE is responsible for enforcing both civil and criminal immigration laws within the interior of the United States. Non-ERO ICE operations conducted by the Homeland Security Investigations (HSI) department involve detecting, arresting, and prosecuting lawfully present aliens who engage in criminal acts, as well as detecting, detaining, and criminally prosecuting illegal aliens involved in, human trafficking and smuggling, drug trafficking, and gun running. ICE is also responsible for the enforcement of U.S. customs laws within the interior of the United States and investigations of certain transnational crimes. As such, it handles some of the impost collection, licensing and enforcement duties that were handled by the U.S. Customs Service prior to the formation of DHS.

Accordingly, it is necessary to distinguish non-ERO ICE expenses associated with the criminal prosecution of lawfully admitted alien criminals, international terrorism interdiction, and customs enforcement duties, from those expenses related to the criminal investigations of illegal aliens.[51] HSI operations are budgeted at approximately $1.7 billion in FY 2022.[52] HSI's work is almost always heavily involved with transnational crime, involving violations of visas and other immigration-related offenses. HSI is also responsible for investigating the cartels that smuggle narcotics and people into the United States, and much of their work on transnational crime is devoted to this particular menace.

State Criminal Alien Assistance Program (SCAAP) **$234,000,000**

The State Criminal Alien Assistance Program (SCAAP) provides federal payments to states and localities that incurred correctional officer salary costs for incarcerating criminal illegal aliens who have at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated for at least 4 consecutive days during the reporting period.[53] This program tends to cover only a minute percentage (typically less than one percent) of the full cost of incarceration, and the rest are absorbed by state and local jurisdictions. Appropriations for this program were $244,000,000 in FY 2021 and $234,000,000 in FY 2022.[54] It should be noted that the Biden administration formally proposed removing all funding for this program over the past two fiscal years, which would have removed even the most meager federal compensation received for the immense cost that criminal illegal aliens impose on the states who incarcerate them. So far, Congress has rejected these proposals.

Executive Office for Immigration Review (EOIR) **$622,809,000**

The Executive Office for Immigration Review (EOIR) is a DOJ agency that includes the U.S. Immigration Court, the Board of Immigration Appeals (BIA) and the Office of the Chief Administrative Hearing Officer (OCAHO). The U.S. Immigration Court hears deportation cases lodged against both lawfully admitted and illegal aliens. The BIA hears appeals of U.S. Immigration Court Decisions. The OCAHO hears cases involving allegations of knowingly hiring illegal aliens and failure to comply with employment verification requirements. The vast majority of the work performed by EOIR is handled by the U.S. Immigration Court, which is faced a case backlog amounting to more than 1.9 million active cases at the end of FY 2022.[55]

Based on data available through Syracuse University's Transactional Records Access Clearinghouse (TRAC), which analyzes deportation cases by the type of charge levied against the respondent, roughly 70 percent of new cases are based upon entry without inspection, terrorism, crime, and other violations associated with illegal alien status.[56] This is a significant increase in cases involving illegal aliens, as opposed to visa violations, from previous years and coincides with the rapid collapse of border security. 31.1 percent of new immigration cases are categorized as "other immigration charge", and even an extremely generous assumption that these primarily represent overstays or violations of valid visas still leaves the percentage of new cases involving illegal aliens much higher than in previous years.

EOIR's budget was $673 million in FY 2020, $734 million in FY 2021, and $891 million in FY 2022. Using the most recent appropriation, which largely coincides with the time period the TRAC data covers, EOIR funding used on deportation cases for illegal aliens is approximately $622,809,000. The President's Budget request for EOIR in 2023, not enacted, is $1.355 billion, but the vast majority of this increase is split between dubious "legal access initiatives" to fund lawyers for illegal aliens or the opening of more immigration courts to process cases faster; if enacted, this cost could nearly double in the near future.

Alien Minors **$8,006,000,000**

The number of unaccompanied minors entering the United States continues to surge in an unprecedented manner, as many would-be illegal aliens are aware that an unaccompanied minor is a potential anchor for future migration down the line and with smugglers acutely aware that children are given much less scrutiny. Unfortunately, these minors often suffer untold horrors as they are brought to the American border. The number of unaccompanied minors entering the United States hit a record 122,000 in FY 2021 and then again with 130,000 in FY 2022.[57]

The Department of Health and Human Services (HHS) Administration for Children and Families (ACF) is tasked with providing for these minors until they are connected with family residing in the United States, placed in foster care, or repatriated. As the scale of UAM entries grows, so do the costs associated with caring for them. These costs have increased on a shocking scale in recent years, with the FY 2020 budget of just over $1.3 billion increasing to over $3.6 billion (after a significant transfer of COVID relief funding) in FY 2021 and a staggering $8 billion in total spending in FY 2022.[58] This amounts to the spending of $61,584 per unaccompanied minor entering the shelter system in FY 2022, nearly tripling the per capita costs from our previous comprehensive cost study for a number of unaccompanied alien minors almost twice as large.

NOTE: The financial impact of UAMs on the nation's public school systems is included, as a separate cost, in the sections of this report pertaining to education.

Byrne Grants **$4,180,000**

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program is the primary provider of federal criminal justice funding to state and local jurisdictions. The JAG Program provides state and local governments with funding to support law enforcement, prosecution, court, and corrections programs. Funding for this program was $92,888,141 in FY 2022, a significant decrease from the amounts routinely allocated in years before FY 2021.[59]

The federal government provides SCAAP funding to states that compensates for the roughly 4.5 percent of the national total of state and local prisoners who are illegal aliens. Since the majority of illegal aliens held in state and local custody are prosecuted in state and local courts, this is a good measure for estimating the share of Byrne grants attributable to the arrest, prosecution, and incarceration of illegal aliens. 4.5 percent of the FY 2022 allocation is just over $4 million.

DOD Funding for National Guard **$191,625,000**

In order to handle the border crisis, the U.S. Department of Defense continues to keep around 2,500 National Guard members from states across the country deployed to the U.S.-Mexico border to assist the

U.S. Border Patrol in support missions.[60] States have committed varying numbers of troops and other means of support, like aviation assets, with funding for the operation provided by the Department of Defense.

FAIR estimates the cost of these deployments based on publicly available figures relating to the pay of state National Guard units deployed at the border. At the prevailing rate for actively deployed National Guard, this operation (which has been ongoing for multiple years) is estimated to currently cost just over $190 million annually.

Criminal Gangs

In its 2009 National Gang Threat Assessment, the FBI concluded that criminal street gangs, whose members are often illegal aliens, are responsible for the vast majority of violent crimes in the United States, as well as the distribution and trafficking of most illegal drugs.[61] In the intervening years, the presence of illegal alien gangs, especially from Central America, has only increased. Established gangs like MS-13, its rival the 18th Street Gang, the Latin Kings, and growing numbers of new Dominican, Middle Eastern, and Somali gangs are responsible for a broad range of both local and transnational crimes, including: theft, extortion, murder, drug trafficking, human/sex trafficking and gun running.

Because it is impossible to truly quantify the comprehensive cost of gangs to American taxpayers, FAIR does not included an estimate of those expenditures. Nevertheless, it is important to remember that crimes committed by transnational gangs represent a significant portion of the costs imposed on U.S. taxpayers by lax immigration enforcement and irresponsible immigration policies.

Total Federal Justice Enforcement Expenditures	
Federal Incarceration	$1,670,374,000
Enforcement and Removal Operations (ERO)	$4,118,902,000
Customs and Border Protection (CBP)	$8,565,574,000
Other ICE Operations	$1,715,897,000
State Criminal Alien Assistance Program (SCAAP)	$234,000,000
Executive Office for Immigration Review (EOIR)	$622,809,000
Alien Minors	$8,006,000,000
Byrne Grants	$4,180,000
DOD National Guard Deployment	$191,625,000
Total	$25,129,361,000



Federal Welfare Costs

Welfare Costs

This section details the profound impact that illegal immigration exerts on programs intended to provide financial aid or services exclusively for low-income Americans. Most, but not all, illegal aliens are theoretically ineligible for the welfare programs covered in this section. However, virtually all federal welfare programs available to the children of U.S. citizens are also available to U.S.-born children of illegal aliens because those children are, under the current constitutional interpretation, U.S. citizens. We include this information because the costs of providing benefits to this cohort are directly attributable to their parents' illegal presence in the United States.

USDA Food and Nutrition Service **$1,550,108,000**

The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) operates the National School Lunch Program (NSLP), the School Breakfast Program (SBP), Special Milk Program (SMP), and other food programs that provide subsidized meals to school children. These programs operate in approximately 100,000 public and non-profit private schools and residential child care institutions. They furnish low-cost or free breakfast, lunch, and snacks to millions of children each school day. However, these schools make no effort to identify whether the students using these programs are legally in the United States.

There are approximately 30 million children receiving meals from these programs.[62] According to research conducted by CIS, approximately 48 percent of illegal alien households received some form of benefit under the school lunch program.[63] FAIR estimates that there are roughly 5.1 million students who are the children of illegal aliens.[64]

Based on these totals, approximately 2.45 million children of illegal aliens are receiving this benefit, which is a conservative figure given the typically low incomes of illegal alien households. The funding for school meal programs, including breakfasts, lunch, snacks and milk, cost nearly $18.8 billion in FY 2019, the last year before the pandemic and the subsequent two-year period (2020-2022) of free school lunches for all students (which was rolled back with the 2022-2023 school year).[65] To estimate the impact of illegal immigration on school nutrition programs, we take our estimate of the number of illegal alien children and compare it to the total number of participants in school nutrition programs. This comparison indicates that almost 8.3 percent of children receiving meals are part of an illegal alien household. Therefore, we conclude that $1.55 billion of the federal funds expended annually on the above USDA FNS programs goes to the children of illegal aliens.

Supplemental Nutrition Assistance Program (SNAP) **$5,757,872,000**

Colloquially referred to as "Food Stamps," the Supplemental Nutrition Assistance Program (SNAP) is also administered by USDA-FNS. Most illegal aliens are ineligible for SNAP, but their U.S.-born children are eligible. In certain limited circumstances, elderly and disabled citizens residing with illegal alien relatives may also qualify for SNAP benefits, but they account for only a very small percentage of use by illegal alien households.

Research conducted by CIS found that approximately 31 percent of illegal alien households with children benefit from SNAP.[66] The estimated total number of American households headed by an illegal alien is approximately 6.7 million, of which 2.7 million contain at least one child.[67] This would indicate that around 825,000 illegal alien households draw benefits from SNAP.

Given that the average illegal alien household with children has 2.5 children, almost 2.1 million children of illegal aliens are likely to draw SNAP benefits. Data from the USDA indicates that the average monthly benefit per participant in FY 2022 was $232.72, or $2,793 per year.[68] Accordingly, the total estimated cost to the American taxpayer of providing SNAP to the children of illegal aliens is almost $5.8 billion.

Women, Infants, and Children (WIC) **$999,961,000**

The Special Supplemental Nutrition Program for Women, Infants, and Children, commonly known as "WIC", provides federal grants to states for supplemental foods, healthcare referrals, and nutrition education for low-income, pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk.

The WIC program is primarily funded through two separate federal grants: a food grant, and the Nutrition Services and Administration grant. In FY 2022, the food grant was approximately $4.7 billion and the Nutrition Services grant approximately $2.2 billion. The total grant allocation was $6,855,458,974.[69]

Eligibility for WIC is based on income. Currently, those earning between 100 percent and 185 percent of the FPL inclusive qualify. According to the U.S. Department of Agriculture, in FY 2021 WIC served an estimated 43 percent of all infants in the United States.[70] WIC is available to anyone in the United States who falls within a WIC eligible category, is a full-time resident of the state where he/she is applying, meets the income requirements, and is at risk for malnutrition. As a federally funded but state-administered program, each state is entitled to determine whether it will allow illegal aliens to draw WIC benefits. All fifty states have extended eligibility to illegal aliens.

A study by CIS found that approximately 35.1 percent of illegal alien households with children use the WIC program.[71] Using FAIR's baseline of 6.7 million illegal alien households, this would indicate that approximately 937,000 illegal alien households draw benefits under the WIC program, equating to roughly 2.3 million individuals. In February 2022 (the most recent month of available statistics), WIC served approximately 6.2 million participants.[72]

Based on FY 2021 data, the average annual benefit per participant is approximately $426.96.[73] This means that the cost to taxpayers for providing WIC to illegal aliens is approximately $1 billion.

Temporary Assistance for Needy Families (TANF) **$1,430,527,000**

The Temporary Assistance for Needy Families (TANF) program is the current successor to the former Aid to Families with Dependent Children program. TANF was created to help needy families achieve self-sufficiency by providing temporary cash assistance to supplement their earned income. In order to qualify, applicants must be either pregnant or responsible for a child under 19 years of age, meet income requirements, and be unemployed or underemployed.[74]

As with SNAP, most illegal aliens are theoretically barred from using TANF. However, illegal alien families that have U.S.-born children may still obtain significant financial assistance via this program. Certain TANF benefits are also available to the U.S. citizen children of illegal aliens who are being cared for by grandparents, foster parents, aunts, and uncles. These are referred to as "child-only" applications.

Despite TANF eligibility provisions requiring that applicants be working, seeking work, or training for employment, neither income earned by parents nor caregiver resources are considered when a child-only TANF case is processed.[75] Therefore, virtually all U.S. citizen children of illegal aliens may be eligible for TANF, under the right circumstances, and the costs for providing TANF to the U.S. citizen children of illegal aliens are borne entirely by the U.S. taxpayer.

There were 1,479,103 child recipients of TANF benefits as of June 2022, according to the DHHS's Office of Family Assistance (OFA).[76]

In FY 2021, according to DHHS OFA, federal spending on TANF amounted to about $15.1 billion (TANF funding is not adjusted for inflation or other circumstances, so funding levels have not changed significantly since the program's creation by the PRWORA of 1996).[77] Based on CIS data, FAIR estimates that U.S. citizen children of illegal aliens accounted for almost 9.4 percent of the TANF caseload in FY 2022.[78] Using this percentage, the total cost for providing TANF benefits to the U.S.-born children of illegal aliens comes out to approximately $1.43 billion.

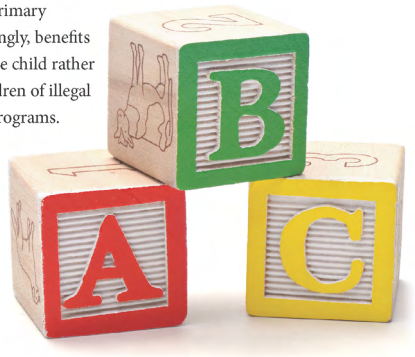
Child Care and Development Fund (CCDF) **$911,307,000**

The U.S. Department of Health and Human Services' Child Care and Development Fund (CCDF) programs are an additional source of welfare benefits that are available to U.S.-born children of illegal aliens, and some illegal alien children through the Head Start and Early Head Start programs. The CCDF program is overwhelmingly federally funded, but is matched in part by state funding.

Pursuant to the Child Care and Development Block Grant Act of 2014, the program matches and expands upon state funds spent on programs providing affordable child-care services to low-income families who work, are training for work, attending school, or whose children receive government protective services.[79]

Assistance is provided in the form of either a contracted childcare program or a voucher that may be used to access care from any provider that meets state requirements. Eligibility requirements for these programs vary widely among states.

Most illegal aliens are not eligible for CCDF programs. However, under relevant federal rules and regulations, the recipient child is considered the primary beneficiary of CCDF childcare programs. Accordingly, benefits are awarded based on the immigration status of the child rather than the parents. As a result, many U.S.-born children of illegal aliens receive subsidized childcare under CCDF programs.



In FY 2022, $9.65 billion federal funds were allocated to the program.[80] While COVID-19 served as a justification to spend almost $50 billion in additional temporary CCDF funding (a part of which was undoubtedly spent on the children of illegal aliens), we do not include this spending spree in our estimate. The

reason is because there is no clear indication at this moment that this spending will be permanent (in the case of these funding streams, the deadlines for obligating the money have either expired, or will expire in 2023).[81]

Since the child is considered the primary beneficiary of CCDF programs, HHS appears to collect little information on the immigration status of the parents of the recipient children. Therefore, we must estimate the childcare expenses for illegal aliens paid out under CCDF programs using the TANF data, for which we estimated that 9.4 percent of the caseload consists of the children of illegal aliens. We do this because the demographics of children from illegal alien households who are eligible for CCDF are very similar to the population that will typically seek child-only TANF benefits and the qualifications for each program set by law cover very similar income groups. While TANF income thresholds are set at the state level, CCDF income eligibility is based on the FPL and state median incomes and tends to have higher thresholds in general; hence, our method of using TANF thresholds may result in a slight underestimation of illegal alien families collecting CCDF benefits. However, it provides the most accurate approximation possible with limited data available.

Applying this proportion to federal CCDF expenditures (the state share is discussed in the state welfare programs section), this works out to about $911 million spent on children with at least one illegal alien parent.[82]

Supplemental Security Income (SSI) **$600,350,000**

The Supplemental Security Income (SSI) program applies to some U.S.-born children of illegal aliens if they have a "medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for at least 12 months in a row … provided your impairment keeps you from engaging in substantial gainful activity for at least 12 months in a row."[83]

According to the existing research, it appears that only around 1.1 percent of illegal alien households participate in this program.[84] That would correspond to 73,400 households. If we err on the side of caution and assume that only one person in each of these households is an SSI recipient, and multiplying them by an inflation-adjusted average yearly benefit of $7,363, federal SSI payments attributable to illegal immigration would amount to a minimum of $541 million annually. Federally-administered state supplements add an additional $60 million to this amount.[85]

Public Housing **$334,442,000**

When a household is eligible for public housing benefits but one or more members are illegal aliens,

they are eligible for prorated or reduced federal housing benefits, depending on the specific program.[86] However, housing benefit fraud is common and illegal aliens often live covertly with citizen and lawfully present relatives who are receiving housing benefits.

Currently there is only fragmented data on the use of housing benefits by families with illegal alien members. According to a Congressional Research Service (CRS) report, mixed-status families make up approximately 0.5% of all assisted households.[87] In addition, the report reveals that this percentage totals more than 25,000 mixed status families consisting of more than 108,000 people, including roughly 55,000 children who were the U.S.-born children of illegal aliens.[88] At a minimum, therefore, the eligible children of illegal aliens cost taxpayers approximately $334 million annually, based on the average benefit received per year.[89] Barring additional information regarding the immigration status of the other households covered by this program, it's impossible to reliably estimate the entire cost of this program.

Total Federal Welfare Programs	
Meals in Schools	$1,550,108,000
Supplemental Nutrition Assistance Program (SNAP)	$5,757,872,000
Women, Infants, and Children (WIC)	$999,961,000
Temporary Assistance for Needy Families (TANF)	$1,430,527,000
Child Care and Development Fund (CCDF)	$911,307,000
Supplemental Security Income (SSI)	$600,350,000
Public Housing	$334,442,000
Total	$11,584,567,000



Total Federal Expenditures

Overall Federal Fiscal Costs before revenue

The approximately $66.4 billion in federal expenditures attributable to illegal aliens is staggering, and constitutes an increase of 45 percent since 2017. This amounts to roughly $3,187 per illegal alien, per year.

FAIR believes that every concerned American citizen should be asking our government why, in a time of increasing costs and shrinking resources, it is spending such large amounts of money on individuals who are not authorized to be in the United States. This is an especially important question in view of the fact that the taxes paid by illegal aliens offset very little of the enormous costs stemming from their presence in the country.

Total Overall Federal Expenditures	
Federal Educational Expenditures	$6,602,699,000
Federal Medical Expenditures	$25,129,361,000
Federal Law Enforcement	$23,132,475,000
Federal Welfare Programs	$11,584,567,000
Total Federal Expenditures	$66,449,136,000



Federal Tax Payments and Credits

Taxes collected from illegal aliens help offset fiscal outlays and therefore must be included in any examination of the cost of illegal immigration. However, illegal alien advocates frequently cite the alleged large tax payments made by illegal aliens as a justification for their unlawful presence and as a reason itself to grant them amnesty. That argument is nothing more than a red herring. Such claims rarely look at the costs associated with illegal immigration, and instead only focus on the amounts contributed to the economy and paid in taxes.

Most studies grossly overestimate both the taxes actually collected from illegal aliens and, more importantly, the net amount of taxes actually paid by them (i.e., the amount of money collected from illegal aliens and ultimately kept by the federal government). A predominant reason for this is that in recent years, the United States has focused on apprehending and removing almost solely criminal aliens (and since President Biden took office, many criminal aliens are now protected from deportation as well). Because of this, the majority of illegal aliens seeking employment in the United States now live in an environment where they have little fear of deportation even if discovered.

This increasingly comfortable environment has created an environment where most working illegal aliens are both able and willing to not only work in the above ground economy, but even file tax returns. Because the vast majority of illegal aliens hold low-paying jobs, most who file tax returns actually wind up receiving a complete refund of all taxes paid. Many will receive credits in excess of their annual

deductions. As a result, it's often beneficial for illegal aliens to file tax returns with the IRS, knowing that it will not subject them to removal, and will likely result in a monetary profit. Indeed, the IRS has stated in the past that they have no intention of reporting known or suspected illegal aliens who file tax returns.[90]

Government data support this argument. According to the latest information available from the Congressional Budget Office (CBO) from 2019:[91]

> The lowest-income households in the United States (the bottom 20 percent) had an average income of about $20,000 before taxes and transfers and paid an average net federal income tax rate of −11.1 percent.
>
> The second-lowest 20 percent had an average household income of about $50,000 before taxes and transfers and paid a net federal income tax rate of 1.7 percent.

In 2017, FAIR estimated that the average household headed by an illegal alien earned approximately $36,000 per year. Since that time, the overall average household income for the country has increased by approximately 13.2 percent.[92] Using the same methodology as before and assuming, generously, that the income for illegal aliens has increased at the same rate as the overall average, this cohort now earns approximately $40,800 annually.

FAIR estimates that there are approximately 6,673,000 households with an illegally present head of household.[93] This figure was derived from previous research from FAIR and organizations such as the Heritage Foundation and Pew Research, then applied to our most recent estimate of the illegal alien population.[94,95]

We therefore estimate that illegal aliens in the United States earn a gross income of approximately $272,258,400,000 annually. Therefore, despite making up approximately 4.7 percent of the entire U.S. population, illegal aliens only contribute approximately 1.3 percent of the gross personal income earned in the country.[96]

Income Tax

Income Tax Paid **$4,146,850,000**

To determine how many illegal aliens earn an income significant enough to require that they pay more in income taxes than they receive in benefits, several factors must be considered. First: many illegal aliens who are paid in cash and work under the table avoid paying taxes regardless of what their income level happens to be. Second: there is only a small population of visa overstayers and illegal entrants who possess the specialized skills sufficient to earn an income which results in a net tax payment greater

than the amount they receive in benefits. Finally: those illegal aliens who are neither "white collar" nor "highly-skilled" business visa overstayers are unlikely to be paying more in taxes than they receive in benefits. As mentioned before, the first and third cohorts comprise the vast majority of illegal alien households.

However, a small number of illegal aliens may work jobs that earn enough to necessitate a net payment of income tax payments. Many of these workers with high earning potential use fraudulent means to obtain employment. These include using stolen or fake Social Security Numbers (SSNs), overstaying their high-earning occupational visa, or working as "subcontractors," a loophole which allows employers in many states to avoid verifying their employment eligibility. A small number of illegal aliens who hold work authorization (especially college-educated DACA students and TPS holders) will also fall into this category.

Based on data from the Bureau of Labor Statistics (BLS), the American Community Survey (ACS), and previous FAIR estimates, the aboveground illegal alien labor force participation rate has likely decreased about 1 percent since our last report in 2017.[97] The main reasons for this decrease are the lingering impacts of the COVID-19 pandemic along with a more generous welfare environment at both the federal and state levels. The unemployment rate among the foreign-born has also increased by approximately 8 percent during this time period. Based on these factors, and adjusted to fit the current illegal alien population, we estimate that approximately 7.9 million illegal aliens are participating in the aboveground economy, with just under 7.5 million currently employed. We also estimate that an additional 2.6 million illegal aliens are participating in the underground economy and are therefore paying no federal taxes at all.[98] This indicates that illegal aliens have a slightly higher labor force participation rate than the overall foreign-born population (67.8 percent vs 64.7 percent, respectively). This makes sense as a higher proportion of illegal aliens are in single-member households, and the primary driver of illegal immigration to the United States is economic opportunity.

In FAIR's 2017 report, we estimated that, in addition to visa overstayers who worked higher earning jobs, approximately 3 percent of the overall illegal alien workforce employed in the open economy falls within an income bracket that requires them to pay more in taxes than they receive in benefits.[99] Based on currently available data, we believe this proportion has stayed constant.[100] This means that approximately 414,685 illegal aliens currently fall into this category.

In order to determine the average income of those illegal aliens who pay more in taxes than they receive in credits, we assume that they earn, on average, a wage similar to that of a foreign-born worker with at least a bachelor's degree. In 2020, that income was approximately $71,000 for individuals ($82,000 when adjusted for inflation).[101] Assuming standard deductions, this makes the taxable total approximately $69,050,[102] and places the alien in the 22 percent tax bracket.[103] This means the average federal income

tax paid is approximately $10,000 per individual (Social Security and Medicare taxes are calculated later in this section). This means that illegal aliens who pay more in income taxes than they receive in benefits are contributing approximately $4,146,850,000.

Additional Child Tax Credit **$5,400,000,000**

Although it seems counterintuitive, large numbers of illegal aliens file tax returns. Many wish to establish a record of complying with tax laws in case a new amnesty is enacted (full payment of taxes owed was a requirement under the 1986 amnesty, and it is often listed as a requirement in recent amnesty proposals). Others want to take advantage of various benefits and credits that are available to them. One benefit is the Additional Child Tax Credit (ACTC), which is an annual lump sum paid by the U.S. Treasury to low-income filers with citizen children even if their parent does not have a SSN and has no tax liability. As the IRS explains on its website, "It [the ACTC] is a refundable credit, which means taxpayers may receive refunds even when they do not owe any tax."[175] However, to receive the funds a tax return must be filed.

Most illegal aliens who are not using a stolen or fraudulent SSN file their tax return using an Individual Tax Identification Number (ITIN). An ITIN allows individuals who don't qualify for a SSN to file income tax returns. The vast majority of ITIN recipients are illegal aliens according to the federal government. However, in some instances, lawfully permitted migrants who are not eligible for Social Security Numbers, or lawfully permitted migrants who are working without authorization, may apply for ITINs as well. According to the U.S. Treasury Department, there were 5.4 million active ITINs in 2021.

Per the Treasury Inspector General for Tax Administration (TIGTA), the U.S. Department of Treasury paid $4.2 billion to 2.18 million illegal alien claimants using ITINs in 2010.[176] The TIGTA report noted a very strong correlation between tax returns filed using an ITIN and the claim for the ACTC, i.e., 93 percent of all such cases. In addition, the report noted allegations that some filers for the credit were identifying children who did not have SSNs because those children lived abroad. However, the report still offers strong evidence that at least 90 percent of ITIN filers for tax credits are illegal aliens.



As part of President Biden's $1.9 trillion

stimulus package, the ACTC increased to $3,600 for children under six, and $3,000 for children between six and 18.[105] Additionally, the income threshold was raised to $150,000 for families, and $75,000 for single filers. The U.S.-born children of illegal aliens who have SSNs are allowed to take part in this benefit so long as one of their parents have an ITIN or SSN. FAIR estimates that there are nearly 2.7 million households with at least one illegal head and one child and 5.4 million active ITIN filers, nearly all of whom are believed to be illegal aliens. Furthermore, there are more than 5.3 million U.S.-born children of illegal aliens who hold SSNs.

FAIR estimates that less than 5 percent of illegal alien households make above the threshold which would disqualify them for this credit (see the federal income tax section of this report). However, we also estimate that approximately 25 percent of the illegal alien workforce participates in the underground economy, therefore paying no taxes and receiving no credits. While it's most likely that the majority of underground economy workers are single-person households without U.S.-born children, we will assume the ratio is even due to a lack of hard data. This means that illegal alien households received approximately $13.4 billion in child tax credits in 2022 for the 2021 tax year.[106]

However, ACTC totals reverted back to the previously set amounts for the 2022 tax year since Congress declined to extend the increased limits. So, while we estimated that illegal aliens received $13.4 billion for the 2021 tax season, we estimate that this amount will decrease dramatically to somewhere in the area of $5.4 billion going forward, based on the current limits set by the IRS and other restrictions.[107]

This is the total that we use since it better represents what the amount will be in future years, barring a reinstatement of the COVID-era expansion. However, it is important to highlight the fact that illegal aliens received approximately $8 billion in tax credits under the Biden Administration's stimulus package for tax year 2021.

Earned Income Tax Credit **$2,987,987,000**

The Earned Income Tax Credit (EITC) is a refundable tax credit available to low and moderate-income individuals who are employed. The amount paid depends on a recipient's income, marital status, and number of children. The credit increases with each additional dollar earned, until a maximum credit amount is reached. In tax year 2022, these limits ranged from $560 to $6,935.[108] The average EITC benefit in 2013 was $2,411.[109]

According to the IRS, a family with less than $53,865 in earnings and two dependents would have zero tax liability and qualify for an EITC of $5,980. Instead of paying a tax on income, that worker would receive a net profit courtesy of the American taxpayer. Based on an annual household income of approximately $40,600 and an average household size just over three, most illegal alien households would qualify for a credit of approximately $4,025. This is assuming, however, they were eligible for the program.

Theoretically, most illegal aliens are barred from participating in the EITC program. However, there is no provision in the relevant statutes specifically barring individuals who are unlawfully present from collecting an EITC; rather, anyone filing for an EITC is required to have a valid SSN and must be considered a "resident alien" for taxation purposes. This requirement blocks those who cannot obtain a SSN from collecting an EITC. The program is also closed to ITIN holders.[110] However, there are certain classes of illegal aliens who are eligible for SSNs, such as parolees, TPS holders, and DACA recipients. Once these illegal aliens meet the criteria for being a "resident alien," they may apply for and receive the EITC.[111]

However, there are several major designations (along with a collection of smaller categories) that illegal aliens can obtain which would provide them a Social Security Number and work authorization within the United States. Below is a list of those categories and how many illegal aliens FAIR estimates to hold those designations:

DACA: 594,000

TPS: 450,000

Qualified asylum applicants: 508,000

Stolen identifications and fraudulent SSNs: 977,000

Other designations offering SSNs: (at least) 440,000[112,113]

Total: 2,969,000

Based on FAIR's estimates regarding household size, income, and employment participation rates, we assume that approximately 25 percent of this population will be tax filers receiving the EITC at the average credit of $4,025. This means that illegal aliens receive just under $3 billion in these tax credits.

Net Income Tax Payment and Credit Receipt **$4,241,137,000**

Therefore, although illegal aliens do technically pay billions in income taxes every year, they ultimately receive a far greater amount in tax credits. As our estimate details, because illegal aliens pay about $4.1 billion in income tax and receive tax credits of $5.4 billion (ACTC) and $3.0 billion (EITC), the U.S. Treasury suffers a net loss of $4.2 billion annually.

Other Taxes

Social Security and Medicare Taxes **$19,527,768,000**

Illegal aliens who work in the open economy will normally have Social Security and Medicare taxes withheld, with a matching amount paid by the employer. The standard withholding amount for workers and employers is 6.2 percent each (12.4 percent total) for Social Security and 1.45 percent (2.9 percent total) for Medicare.

A 2010 Social Security Administration (SSA) actuarial note on the impact illegal aliens have on the Social Security Trust Fund estimated that illegal aliens pay a total of $13 billion into the Social Security trust fund annually.[114] The report also stated that illegal alien retirees, even though nearly all are technically excluded from retirement benefits even if they hold a SSN,[115] managed to receive approximately $1 billion payouts every year. This makes the total net payment into the fund by illegal aliens approximately $12 billion annually. At the time, the report indicated that the primary way in which illegal aliens obtained Social Security benefits was by using stolen/fraudulent Social Security Numbers, or through a small number of those receiving deportation deferment. Since then, with the implementation of DACA and the expanded utilization of TPS, parole and other programs that grant work authorization to illegal aliens, a much higher number are now contributing to the program.

Based on FAIR's estimate of the total earnings contributed by illegal aliens to the aboveground economy, total contributions by illegal aliens has likely increased to approximately $16.9 billion.[116] This figure falls closely in line with the 2010 SSA estimate when adjusted for the increase in the illegal alien population and their associated incomes since that time.

Because nearly all who pay into the Social Security Trust Fund will also pay into Medicare, and since the rate is similarly fixed, we extrapolate from our Social Security analysis to determine how much illegal aliens pay into Medicare. The Medicare deduction rate is 1.45 percent for both employees and employers, which is 23.4 percent of the Social Security deduction rate. Therefore, the total amount paid into Medicare by illegal aliens is 23.4 percent of the Social Security rate. This comes out to approximately $3.9 billion.

Adding these figures together, we estimate that illegal aliens make approximately $20.8 billion in Social Security and Medicare tax contributions annually. These estimates again are conservative, as we operate on the assumption that virtually all illegal aliens working in the open economy are paying social security taxes.

According to data contained within the 2010 SSA actuarial note, illegal aliens recoup approximately 7.7 percent of what they pay into the Social Security program, which means that they are likely receiving

around approximately $1.3 billion in improper payments each year. This makes the net total paid in Social Security and Medicaid approximately $19.5 billion.

Excise taxes **$932,864,000**

The federal government also receives revenue in the form of excise taxes on the sale of consumer goods such as fuel, tobacco, alcohol and airline tickets. Here, we include a rough estimate of receipts by the federal government from fuel, tobacco, and alcohol purchases. We do not include an estimate of excise revenue generated by illegal alien purchases of airline tickets based on the reasonable presumption that most illegal aliens engage only in very limited commercial airline travel.[117]

Fuel Taxes

The United States consumed approximately 135 billion gallons of motor gasoline in 2021, which averages out to about 592 gallons per licensed driver.[118] We assume that the illegal alien rate of gasoline consumption is slightly lower than it is for the lawful migrant and U.S. citizen population. This presumption is based on the fact that many states do not permit illegal aliens to obtain driver's licenses. In addition, many illegal aliens fall into an income bracket which limits the ability to purchase, maintain, insure, and operate a motor vehicle at the same rate as the general public. Moreover, it is safe to assume that those illegal aliens that do drive, minimize the amount that they drive due to their unlawful status and lower average income.

It is important to note that all 50 states now allow DACA recipients, TPS holders, and several other categories of illegal aliens with deferred deportation to obtain drivers licenses.[119] Moreover, a growing number of states are making licenses available to all illegal aliens.[120] Because of this, we assume that a greater percentage of illegal aliens are driving now than when this report was last published.

Based on these assumptions, we estimate that approximately 65 percent of adult illegal aliens drive on a regular basis,[121] compared to more than 80 percent of American adults overall.[122] This means that approximately 9 million illegal aliens drive in the United States. Furthermore, we assume that they consume, on average, approximately 70 percent as much fuel as the overall average driver, or around 414 gallons each year. With the current federal fuel tax at 18.4 cents per gallon, that means illegal aliens pay approximately $686 million in federal fuel taxes annually.[123]

Alcohol Taxes

We presume that illegal aliens, in general, will prefer beer or wine because it is less expensive than liquor and can generally be purchased in grocery and convenience stores. Furthermore, all individuals in the United States consume beer at a much higher rate than other alcoholic beverages. The general excise tax on beer was reduced from $18 per barrel (31 gallons) for beer to $16 per barrel in 2020.[124]

Studies indicate that alcohol consumption varies widely among immigrant groups, but that immigrants overall tend to drink less than native-born Americans.[125] However, the vast majority of illegal aliens are Hispanic, a demographic that consumes alcohol at a rate higher than the average American.[126] Because of the offsetting variances in terms of income, nativity, and race, we simply assume that illegal aliens likely consume alcohol at a rate relatively close to the rest of the country. This amounts to approximately $136 million in excise revenue generated by illegal alien alcohol purchases[127]

Tobacco Taxes

Studies of smokers have found an incidence of smokers among the foreign-born population to be about one-third lower than the native-born population.[128] Based on this data, it can be assumed that approximately 10.5 percent of illegal alien adults are smokers. The average smoker consumes approximately 75 packs of cigarettes per year.[129] The current federal excise tax on cigarettes is $1.01 per pack,[130] which means that illegal aliens are likely to pay approximately $111.5 million per year.

The cumulative total federal excise tax revenue from the illegal alien population for fuel, alcohol, and cigarettes, therefore, totals approximately $932,864,000 annually.

Net Federal Impact of Illegal Aliens

Federal Receipts from Illegal Aliens	
Income Taxes	$4,146,850,000
Social Security and Medicare Taxes	$19,527,768,000
Excise taxes	$932,864,000
Total Receipts	$24,607,482,000
Credits Given to Illegal Aliens	
ACTC	$5,400,000,000
EITC	$2,987,987,000
Total Credits	$8,387,987,000
Net Federal Receipts from Illegal Aliens	
Total Receipts	$24,607,482,000
Total Credits	$8,387,987,000
Net Federal Receipts from Illegal Aliens	$16,219,495,000
Net Federal Impact of Illegal Aliens	
Total Federal Outlays	$66,449,136,000
Net Federal Receipts	$16,219,495,000
Net Federal Fiscal Impact	$50,229,641,000

The Fiscal Burden of Illegal Immigration on United States Taxpayers 2023

State by State Costs of Illegal Immigration

State	# of Illegal Aliens	# of Illegal Aliens & their Kids	Adjusted Cost	Cost Per Alien to State Taxpayers	Cost Of Illegal Aliens To State Taxpayers	Cost of Illegal Aliens & their Kids to State Taxpayers
California	3,896,000	5,[illegible]	1.230	$ [illegible]	$ 22,821,800,942	$ [illegible]
Texas	2,226,000	2,992,000	0.836	$ 4,466	$ 9,942,111,305	$ 13,363,340,982
Florida	1,185,000	1,595,000	0.928	$ [illegible]	$ 5,972,788,206	$ 8,039,322,522
New York	1,081,000	1,453,000	1.212	$ 6,846	$ 7,400,654,942	$ 9,947,411,314
New Jersey	697,000	937,000	1.120	$ [illegible]	$ 3,920,584,853	$ 5,270,571,029
Illinois	628,000	845,000	0.898	$ 4,636	$ 2,911,654,025	$ 3,917,751,037
Georgia	514,000	692,000	0.832	$ 4,386	$ 2,254,644,675	$ 3,035,436,022
North Carolina	488,000	657,000	0.874	$ 4,781	$ 2,333,226,108	$ 3,141,249,083
Arizona	453,000	610,000	0.893	$ 5,230	$ 2,369,284,949	$ 3,190,427,856
Virginia	419,000	563,000	0.940	$ 5,038	$ 2,110,828,714	$ 2,836,268,654
Maryland	350,000	471,000	1.194	$ 6,123	$ 2,143,152,396	$ 2,884,070,796
Washington	346,000	466,000	0.981	$ 5,630	$ 1,947,937,290	$ 2,623,522,477
Nevada	293,000	395,000	0.939	$ [illegible]	$ 1,473,177,349	$ 1,986,024,071
Massachusetts	292,000	393,000	1.196	$ [illegible]	$ 2,159,721,305	$ 2,906,746,195
Colorado	278,000	374,000	1.016	$ 5,191	$ 1,443,024,697	$ 1,941,335,384
Pennsylvania	251,000	338,000	0.944	$ [illegible]	$ 1,216,181,625	$ 1,637,726,651
Michigan	185,000	248,000	0.827	$ 4,525	$ 837,055,573	$ 1,122,106,931
Oregon	181,000	243,000	1.177	$ 6,030	$ 1,091,347,377	$ 1,465,179,075
Connecticut	167,000	225,000	1.194	$ [illegible]	$ 950,901,447	$ 1,281,154,644
Tennessee	162,000	218,000	0.829	$ 4,456	$ 721,798,530	$ 971,309,133
Indiana	154,000	207,000	0.838	$ 4,451	$ 685,394,297	$ 921,276,750
Minnesota	140,000	187,000	0.922	$ 4,692	$ 656,934,062	$ 877,476,212
Utah	137,000	185,000	0.874	$ [illegible]	$ 689,499,518	$ 931,075,992
Oklahoma	136,000	183,000	0.824	$ 4,278	$ 581,796,674	$ 782,858,760
Ohio	132,000	178,000	0.857	$ 4,411	$ 582,270,353	$ 785,182,749
New Mexico	119,000	160,000	0.889	$ 4,628	$ 550,760,808	$ 740,518,733
South Carolina	117,000	157,000	0.929	$ 4,752	$ 555,936,741	$ 746,000,585
Wisconsin	111,000	150,000	0.891	$ [illegible]	$ 514,282,563	$ 694,976,436
Kansas	104,000	140,000	0.842	$ 4,308	$ 447,982,255	$ 603,053,035
Arkansas	97,000	131,000	0.813	$ 4,475	$ 434,102,463	$ 586,262,089
Louisiana	97,000	131,000	0.867	$ [illegible]	$ 447,503,641	$ 604,360,588
Alabama	91,000	122,000	0.836	$ 4,298	$ 391,086,456	$ 524,313,710
Missouri	77,000	104,000	0.833	$ 4,446	$ 342,317,218	$ 462,350,529
Kentucky	69,000	94,000	0.875	$ [illegible]	$ 315,944,133	$ 430,416,645
Hawaii	63,000	84,000	1.735	$ [illegible]	$ [illegible]	$ [illegible]
Idaho	62,000	83,000	0.839	$ [illegible]	$ 302,552,823	$ 405,030,392
Nebraska	56,000	75,000	0.866	$ 4,495	$ 251,721,107	$ 337,126,482
Iowa	55,000	74,000	0.853	$ [illegible]	$ 239,356,102	$ 322,042,755
Rhode Island	42,000	57,000	1.139	$ [illegible]	$ 230,445,009	$ 312,746,797
Washington DC	38,000	51,000	1.417	$ [illegible]	$ 287,622,055	$ 388,019,073
Delaware	35,000	47,000	0.948	$ [illegible]	$ 182,021,162	$ 244,426,416
Mississippi	34,000	45,000	0.786	$ [illegible]	$ 141,758,417	$ 187,621,434
Alaska	15,000	21,000	1.216	$ 6,192	$ 92,885,562	$ 130,039,073
New Hampshire	14,000	19,000	1.091	$ 5,659	$ 79,232,741	$ 107,530,149
Maine	12,000	16,000	1.063	$ 5,650	$ 31,807,322	$ 42,496,390
Vermont	10,000	13,000	1.116	$ 5,743	$ 32,335,129	$ 43,201,571
South Dakota	9,000	12,000	0.926	$ [illegible]	$ 26,695,927	$ 35,667,276
Wyoming	8,000	10,000	0.876	$ [illegible]	$ 25,445,858	$ 33,997,112
Montana	8,000	10,000	0.906	$ 5,196	$ 29,251,625	$ 39,061,833
North Dakota	6,000	9,000	0.918	$ [illegible]	$ 27,057,058	$ 36,149,768
West Virginia	6,000	9,000	0.881	$ [illegible]	$ [illegible]	$ [illegible]
	App. 15,516,000	App. 20,852,000			$85,801,109,086	$ 115,654,701,582

*totals may vary slightly from elsewhere in this report due to rounding.

Estimated Total State Taxes Collected from Illegal Aliens: $15,172,140,000

Total Net Cost of Illegal Immigration on States and Localities: $100,482,561,582

Part II: State and Local Expenditures and Receipts



State Education Costs

Education

Public School Expenditures **$70,401,000,000**

FAIR recently completed a comprehensive analysis of K-12 education costs associated with mass immigration into the United States entitled: *The Elephant in the Classroom: Mass Immigration Imposing Colossal Cost and Challenges on Public Education.*[131] This report also provided an estimate of the education costs associated with illegal immigration.

A significant number of the students in the United States are the children of illegal aliens. As of the 2021-2022 school year, FAIR estimates that 5.1 million public school students – roughly 6.5 percent of total U.S. enrollment – are the children of illegal aliens or are illegal aliens themselves.[132]

Most of the children from illegal alien households are designated as having Limited English Proficiency (LEP). It is estimated that only 7 percent of illegal alien households speak English as their primary language at home. Furthermore, only 25 percent of all illegal aliens can speak English at a proficient level.[133] LEP students cost roughly 15 percent more to educate than non-LEP students.[134]

Based on the same methodology from our comprehensive K-12 Education report, updated to account for the current illegal alien population, at least 3.8 million children of illegal aliens qualify as LEP,

costing taxpayers approximately $58.8 billion. Additionally, the education of non-LEP children of illegal aliens costs taxpayers approximately $16.9 billion, meaning it costs U.S. taxpayers approximately $75.7 billion to educate the children of illegal aliens.

The vast majority of this cost falls to the states via an unfunded mandate handed down from the U.S. Supreme Court in its ruling in *Plyler v. Doe*.[135] In fact, 98.9 percent of all LEP costs, and 92.1 percent of overall education funding, are borne by state and local governments.[136] Applying both of these totals to the aforementioned totals indicate that states shell out approximately $70.4 billion to pay for K-12 education costs associated with illegal immigration.

Post-Secondary Tuition Assistance **$2,789,760,000**

Title IV of the Higher Education Act precludes illegal aliens from receiving federal tuition grants, loans, or work assistance under the act, and requires recipients to be citizens, permanent residents, or be eligible for permanent residency.[137] In addition, a provision in the Illegal Alien Reform and Immigrant Responsibility Act of 1996 (IIRIRA) prevents states and their subdivisions from offering postsecondary education benefits, like in-state tuition, to illegal aliens on the basis of state residence if U.S. citizens residing in other states are not offered the same benefit.[138] However, largely in response to the efforts of illegal alien advocacy groups, eleven states began offering in-state tuition to illegal aliens by 2010 by arguing that illegals were charged in-state tuition on the basis of local high-school attendance and graduation rather than their state of residence. Three of those states offered scholarship assistance to students who are unlawfully present.

In the years since then, that number has increased significantly. According to the National Conference of State Legislators[139] and research into state legislation, there are now 24 states and the District of Columbia that fully allow illegal aliens to receive in-state tuition at their public universities. This means that significantly more illegal aliens are eligible for grants, state-funded scholarships and subsidized loans, driving up higher education costs for states. Several other states permit illegal aliens to receive in-state tuition only in portions of their university system or restrict in-state tuition to illegals with DACA status.

It is often the case in states with no legislation on the matter that access to in-state tuition is granted under a "don't-ask-don't-tell" policy, with university administrations simply declining to solicit any information on a student's immigration status. In states that do not offer in-state tuition to illegal aliens, it is also likely that many unlawfully present students still receive in-state tuition rates because few states verify the immigration status of enrollees by using the Systematic Alien Verification for Entitlements (SAVE) database.

Several of the states that allow illegal aliens to pay in-state tuition have also extended state-funded financial aid to illegal aliens to counterbalance the ban on federal funding. Of the six most populous

states, California, Texas, New York, and Illinois allow in-state tuition and state funding for illegal alien college students. These states spend nearly $100 million annually supporting illegal alien students with taxpayer funds, and many university administrators in California even bemoan the fact that illegal students aren't using all the aid the government provides.[140]

An increasingly hospitable political climate and the continuation of DACA have led to the steep growth in the numbers of illegal aliens receiving post-secondary education in the United States. Community college systems are significant, but under-referenced, contributors to this growth, as the vast majority (60%) of illegal alien post-secondary students attend community colleges rather than four-year universities. Community colleges, like four-year universities, charge out-of-state tuition rates and allow students to receive state education aid, representing significant costs to the taxpayer when illegal aliens are allowed to access benefits that Americans from other states cannot.

Enrollment data for illegal aliens in public post-secondary schools is sparse, especially in states that do not explicitly bar or permit illegal aliens to receive benefits. To estimate the cost to taxpayers of granting in-state tuition to illegal aliens, FAIR first must estimate how many illegal aliens are enrolled in post-secondary education. By extrapolating from known enrollment values for illegal alien students in certain states, as well as government data on the makeup of the illegal alien population and their choices in higher education, FAIR can determine the size of the illegal alien post-secondary population and their distribution among states. This population, as well as the costs associated with it, has increased significantly since FAIR's last cost study. FAIR then estimates the cost of enrollment and aid based on population, state-level costs, and the proportions of students attending different categories of university.

Significant costs come from both the difference between in-state and out-of-state tuition and from financial aid given to illegal alien students where allowed. Because of their low average family incomes, illegal aliens tend to receive higher amounts of state financial aid than citizen or visa-holder students in states that allow aid. FAIR is able to account for the majority of students who do not hold DACA status but are still permitted to pay in-state tuition in many states. We can also determine the significant increases in financial aid offered to illegal alien students by states like New York and Illinois since the last version of this study was issued. However, these costs are still likely to be an understatement. Even in states that do not permit in-state tuition or financial aid to illegal alien students, fraud, document theft or misuse, or simple "don't ask, don't tell" policies certainly allow at least some illegal aliens to obtain in-state benefits in those states.



The states that bear the greatest fiscal impact from their in-state tuition benefit to illegal aliens are California ($816M), Texas

($459M), Florida ($228M), New York ($226M), and Illinois ($134M). These states, 5 of the 6 most populous, account for two-thirds of the total cost of approximately $2.789 billion that illegal aliens cost in in-state tuition and financial aid. All of these states have large populations of illegal aliens, and in all but Florida, state laws actively permit illegal aliens to take advantage of the financial aid the state offers on the basis of need.

Total State Educational Expenditures	
K-12 Public School	$70,401,000,000
Post-Secondary Tuition Losses/Financial Aid	$2,879,760,000
Total Educational Expenditures	$73,280,760,000



State Medical Costs

State Medical Costs

Illegal aliens access taxpayer-supported medical assistance at the state level in several ways. First, the Emergency Medical Treatment and Labor Act (EMTALA) of 1986 requires that public hospitals provide emergency medical assistance regardless of the patient's ability to pay. Thus, low-income individuals lacking health insurance, including illegal aliens, often rely on hospital emergency rooms as a source of free or low-cost healthcare. This abuse of EMTALA leads to significant hospital operating costs, because EMTALA does not reimburse hospitals for these services.

EMTALA also requires that hospitals provide care for indigent mothers who give birth in emergency rooms regardless of their ability to pay, so many illegal aliens rely on emergency care facilities for child delivery as well. EMTALA even covers delivery costs for mothers who deliberately cross the border specifically for the purpose of accessing U.S. hospitals, adding further to the expenses imposed on healthcare providers. Tens of thousands of women come to the United States with the express intent of giving birth every year, including thousands of illegal aliens.[141] In addition to taking advantage of better healthcare facilities, migrants engage in this "birth tourism" primarily to ensure that their child is born a U.S. citizen.[142]

While hospitals near the border bear the brunt of this financial burden, states far from the Southwest

Border are feeling the strain as well. New York City provides a powerful illustration of the fiscal costs imposed on local taxpayers by furnishing free healthcare to illegal aliens:

"At an April [2016] press conference, Dr. Ram Ramu, [a New York City health official], said that caring for [illegal aliens] consumes about one-third of his $7.6 billion annual budget. Rounding down, that means that $2.5 billion — of which the city is picking up an increasingly large chunk every year, as state and federal aid dries up — goes toward providing health care to illegal aliens in New York."[143]

Although it's unlawful to utilize federal funds to provide non-emergency healthcare for most illegal aliens, some states and local governments use their own funds to offer coverage to illegal alien children. For example, the "Healthy Kids" program in San Francisco covers uninsured children under the age of 19, including illegal alien children. Similarly, the "All Kids" program in Illinois covers all children under the age of 19 whose families meet program income requirements, regardless of immigration status.[144]

Additionally, a number of states are expanding other statewide health benefits to illegal aliens. For example, California has expanded Medi-Cal to cover many illegal aliens. Washington State is slated to start offering coverage to illegal aliens in 2023.[145] The costs of these programs are covered later in this section.

Medicaid births **$937,863,000**

States pay a matching share for all Medicaid births, as mentioned in the federal portion of this cost study. For most Medicaid expenses, this comes out to nearly 63 percent of the total cost of this program.[146] After subtracting costs covered by health insurance, for those illegal aliens who have it, the total reported cost of Medicaid birth for illegal aliens comes out to $2.53 billion, with $1.6 billion covered by the federal government. This leaves the states with a burden of $937,863,000. (See the federal portion of this report for further details on this issue.)

Uncompensated Medical Expenses **$4,501,175,000**

As noted earlier, unpaid medical expenses incurred by uninsured illegal aliens typically fall to the states. Most of these come from unpaid visits to emergency rooms. The Kaiser Family Foundation estimated that, in 2017, states paid for $11.9 billion in total uninsured medical costs, which comes out to approximately $14.45 billion in 2022 dollars.[147]

Only about 47 percent of illegal aliens have health insurance, leaving about 8.2 million illegal aliens uninsured.[148] Many of those who do have health insurance do not have comprehensive plans, leaving them uncovered for certain ailments. In the first quarter of 2022, according to DHHS, there were about 26.4 million uninsured people in America.[149] Since the implementation of the ACA, illegal aliens constitute a growing share - now approximately 31 percent - of the overall uninsured population. That

indicates a total state-level expenditure of approximately $4.5 billion for uncompensated medical expenses incurred by those illegally present.

Improper Medicaid Payments **$4,696,983,000**

As described in the federal expenditures section, there is significant evidence of fraudulent use of Medicaid by illegal aliens. When we calculate the shared costs between states and the federal government, the amount paid by states is approximately $4.7 billion.[150] (See the federal portion of this report for further commentary on this issue and an explanation of our methodology.)

Medicaid for U.S.-born Children of Illegal Aliens **$3,162,623,000**

Sixty-three percent of the Medicaid costs for U.S.-born children of illegal aliens are shouldered by the federal government. That amounts to approximately $5.4 billion of the total $8.5 billion cost, leaving the states with a cost of $3.16 billion.[151] (See the federal portion of this report for further commentary on this issue and an explanation of our methodology.)

Medi-Cal Expansion **$4,802,094,000**

Beginning in May 2022, California expanded access to Medi-Cal, the state's Medicaid program, to all illegal alien adults over 50. As of the end of reporting year 2022, this policy provides free state-funded medical care to more than 304,000 illegal aliens.[152] This drastic change follows a significant expansion enacted in 2020 that provided full Medi-Cal coverage to illegal aliens aged 19-25, which added state-funded coverage for at least another 116,000 illegal aliens.[153] Because another (at least) 142,000 income-eligible illegal alien children under 18 were already included in the Medi-Cal system,[154] California effectively provides healthcare to all illegal aliens under 26 or over 49.

This additional coverage represents a significant burden on the state's finances, reflecting especially high demands that older illegal aliens place on the healthcare system.[155] After accounting for average Medi-Cal expenditures and estimates of the proportion of California's population with a disability,[156] the total spending on the expansion for illegal aliens over 50 in California accounts for nearly $3.7 billion. The previous expansion of Medi-Cal to illegal alien adults aged 19-25 added around $750 million, while existing Medi-Cal spending on illegal immigrant minors totals around $360 million.

It must be noted that the government of California, led by Governor Gavin Newsom, has proposed an expansion of Medi-Cal coverage to all income-eligible illegal aliens beginning after January 1, 2024. The government of California itself estimates that this expansion would cost approximately $819 million to enact, and reach a full annual expenditure of $2.7 billion in the future.[157] If enacted, this total would be in addition to the current costs. Because federal aid matching funds cannot be spent on programs that only benefit illegal aliens, California taxpayers are footing this entire bill, and will be on the hook for all future expansions of the program.



Other State Programs
$526,098,000

Like California, other states have expanded various health insurance coverage to illegal aliens to varying degrees. Generally, this coverage is restricted to children or pregnant/postpartum women. However, Illinois has taken after California in progressively expanding state-funded coverage to older illegal aliens, with any illegal alien over the age of 42 now able to enroll in state-funded care in addition to all minors. State statistics on the expansion program[158] indicate that total annual spending on these covered populations clocks in at just over $460 million annually.

As of mid-2022, the state of Oregon has also aggressively moved to expand its state-funded Medicaid coverage to illegal aliens. Oregon's Cover All Kids program funds medical services for illegal alien children under 19, at a conservatively estimated annual cost of around $15.2 million based on state data,[159] and the state legislature has authorized $50 million in annual spending on health coverage for illegal alien adults.[160] Several other states like Vermont, Rhode Island, and Maine have established programs that provide health insurance to illegal aliens under 19, although due to the small population size of these states and the difficulty of finding concrete data the costs can be hard to estimate. Nevertheless, these states do incur costs in the millions of dollars annually by operating these programs, which cannot be federally funded.

The coming years are certain to see additional billions in state taxpayer dollars spent on healthcare for illegal aliens, none of which is reimbursable by the federal government. In 2022, multiple states adopted legislation expanding illegal aliens' access to medical benefit programs at taxpayer expense. The largest of these expansions will be in New York State, where full state-funded Medicaid coverage was approved in the 2022 state budget and will be provided to illegal aliens 65 or older once implemented.[161] Coverage for this age group, as California and Illinois have proven, is extremely expensive. With Medicaid costing over $20,000 a year per senior enrollee in New York,[162] the fiscal impact of this expansion will cost billions once fully in place. Other relatively populous states like Colorado, Connecticut, New Jersey, and Washington also have programs set to go into effect in the coming years that will expand coverage to certain categories of illegal aliens.

Additionally, some other services are made available to illegal aliens through Medicaid programs in some states. For example, in New York, Medicaid for Emergency Care is used to provide chemotherapy and radiation to uninsured or underinsured illegal aliens with cancer. In twelve states - including New

York, California, North Carolina, Colorado, Illinois, and Washington State - it can be used to provide outpatient dialysis for illegal aliens. These are medically important procedures, but they impose a heavy burden on taxpayers who are attempting to deal with the increasing costs of providing healthcare for themselves and their dependents. Since detailed information is not made available on the extent to which illegal aliens are using these programs, we cannot affix a cost estimate to them.

Total State Medical Expenditures	
Medicaid births	$937,863,000
Uncompensated Medical Expenses	$4,501,175,000
Improper Medicaid Payouts	$4,696,983,000
Medicaid for Citizen Children of Illegal Alien	$3,162,623,000
Medi-Cal Expansion	$4,802,094,000
Other State Programs	$526,098,000
Total Medical Expenditures	$18,626,836,000



Administration of Justice

Administration of Justice

Immigration enforcement is a completely federal responsibility — at least, that is the argument of those who oppose state and local efforts to cooperate with the Department of Homeland Security. But the costly truth is that state and local governments face extensive criminal justice expenditures related to the presence of illegal aliens.

These costs may be generally grouped into three categories: (1) Policing; (2) Judicial; and (3) Corrections.

Policing costs refer to the fiscal costs of police operations in response to criminal activity by illegal aliens, especially in municipalities where gang activity and drug trafficking is rampant.

Judicial costs refer to the cost of operating the judicial system for illegal aliens. These costs include providing pre-trial detention, court hearings, and probation of illegal aliens who stand accused of criminal offenses. These costs are significantly higher than average because of the frequent need for bilingual court services programs in order to ensure that due process requirements are met.

Corrections costs incorporate the cost to states and local jurisdictions for the incarceration of illegal alien criminals. The federal government operates a program to help defray the state and local costs of incarceration of illegal aliens, SCAAP (see Part I of this report). However, that program only covers a fraction of the expenses, around 2-5% of the costs reported by jurisdictions who apply for and win

grants.[163]

The National Institute of Corrections provides estimates of the cost per prisoner expended by each state.[164] We use this data and assign costs for each state proportionate to the size of the illegal and deportable alien population reported by the local authorities to the Bureau of Justice Statistics.[165] This method, to varying degrees, understates these expenditures because not all jurisdictions that imprison illegal aliens participate in the SCAAP program, meaning that many states face expenditures proportional to the size of their criminal alien population, but are not reflected in federal compensation calculations. We estimate non-participating jurisdictions' costs by their total illegal alien population and the average state correctional expenditure. Our estimations are listed below as an aggregate for all 50 states:

Policing	$8,952,291,000
Judicial	$3,720,668,000
Corrections	$6,213,721,000

As is reflected in these figures, correctional expenses make up approximately a third of the total cost of illegal aliens in this section, with police expenses comprising nearly half of the total and judicial expenses making up the rest.[166]

In FY 2020, the most current and complete year of statistics available, there was a sudden and significant decrease in the number of criminal aliens in custody due to the COVID-19 pandemic.[167] The number of criminal aliens in federal custody fell by 24% from 2019, and similar declines were registered in most states due to COVID-driven lenient release policies in jails and prisons across the country.[168] Nevertheless, an examination of state and local budgets indicate that, as a general rule, staffing costs did not appreciably decrease because of the temporary nature of the disruptions and rising personnel expenses. Costs are anticipated to increase further as the custodial population renormalizes in the coming years.

State Border Security Costs **$3,135,000,000**

In addition to costs by ICE, CBP, the National Guard, etc., some border states also allocate money to their own law enforcement agencies to combat the public safety and national security threats associated with illegal migration. These costs are only necessary due to the federal government failing to properly secure the border. Some states even fund the deployment of National Guard Troops to support U.S. CBP.

The vast majority of state border security funding efforts come from Texas. For the past two legislative sessions, the state has reinforced its dedication to combat illegal immigration and the drug trade epidemic

until the federal government effectively addresses these issues. Arizona's approximately $20 million border task force, one of the components of its greatly increased border funding, is also a relatively new endeavor with the same goal.

Listed below are the states that share a border with Mexico, along with the portion of their state budget that is *officially* dedicated to combating illegal immigration:

Texas: $2.589 billion — The Texas Legislature meets every two years. Spending in the current legislative cycle is approximately $4.5 billion, reflecting massive increases in illegal border crossings and state efforts to compensate for inadequate federal enforcement.[169] The Texas government has greatly increased spending on public safety in recent years and recently announced a further $339 million increase in border funding outside the normal legislative appropriations cycle.[170] Meanwhile, the federal government has so far ignored Texas' requests for reimbursement of its funds spent on border security. Therefore, the entirety of these costs is being paid for by state taxpayers.

New Mexico: *Negligible* — Any state funds spent on border security are not specifically tracked or reflected in state or legislative budget records. Thus, while the New Mexico government does not appear to specifically designate any significant amount of state resources directly to border security measures, as its border is short and has difficult terrain. Of course, this doesn't mean that state and local law enforcement officers aren't expending additional effort and resources to combat the impact of illegal immigration.

Arizona: $546 million — The Arizona government, like Texas, has drastically increased appropriations in recent years in response to a lack of federal action to secure the border. Arizona's H.B. 2317 recently appropriated $335 million for state-level border wall construction and physical infrastructure to reinforce the border. Total budgetary expenditures on border security, including dedicated law enforcement and facilities construction, are $546 million.[171]

California: *Negligible* — The California government does not allocate funding toward border security. On the contrary, the state government spent considerable time and expense litigating the Trump Administration's policies to improve border security. However, California benefits from being the first state in the U.S. to have its international border reinforced by wall. This effort began in the 1990s, when the Federal government constructed, and has since maintained, a wall along the busiest parts of California's border that has been extremely successful in preventing illegal immigration and drug/human trafficking directly into the state. Similar walls across the entire Southern border would quickly pay for themselves, and drastically reduce the need for states to divert tax dollars to fund border security measures.

The entirety of these costs are directly attributable to the failure of the federal government to secure the border and remove incentives that encourage illegal immigration. It's also important to note that the failure of the federal government to secure our borders has also resulted in enormous costs not directly reflected in state and local budgets, especially in small communities located near the border.

Total State Administration of Justice Expenditures	
Policing	$8,952,291,000
Judicial	$3,720,668,000
Corrections	$6,213,721,000
State Border	$3,135,000,000
Total	$22,021,680,000
SCAAP funds from Federal Government	-$210,240,000
Net Justice Expenditures	$21,811,440,000



State Welfare Programs

State Welfare Programs

As noted in the Federal portion of this study, illegal aliens (with a few exceptions) are not considered "qualified aliens" pursuant to Title IV of the PRWORA of 1996.[172] Therefore, most are ineligible state and local public benefits which are supplemented by federal funds, as stated in the act. However, the fact that most medical benefits exclude the majority of illegal aliens does not mean they receive no taxpayer-supported services.

Illegal aliens with certain designations, such as TPS status or recipients of parole with a set term of at least one year, are able to lawfully collect certain state benefits, even if they are supplemented by federal funds. Moreover, PRWORA contains a loophole that undermines its own declared intent by allowing states to extend state welfare benefits "through the enactment of a State law … which affirmatively provides for such eligibility" so long as the funding is entirely sourced at the state level.[173] This creates a pull factor at the state level and saddles state taxpayers with additional costs.

In addition to the exceptions granted under PRWORA, the U.S.-born children of illegal aliens are eligible for virtually all state programs granted to U.S. citizens, granted they meet other eligibility criteria. There are also many recipients of welfare who obtain it by fraud.

Child Care and Development Fund (CCDF) **$171,033,000**

In 2022, the state share of CCDF funding was $1.8 billion. These costs were divided almost equally into state "Maintenance of Effort" programs and state-share matching funds.[174]

As laid out in the federal section, FAIR estimates that 9.4 percent of the CCDF caseload consists of the children of illegal aliens. Applying that proportion to the state's share of CCDF costs results in approximately $171 million attributable to illegal immigration. For more details on the CCDF program and how illegal aliens utilize the program, see our analysis in the federal section of this report.

Temporary Assistance to Needy Families (TANF) **$1,432,105,000**

TANF programs vary widely by state, which presents difficulties in estimating the amount of TANF funding attributable to the presence of illegal aliens and their citizen children who qualify for the program. As previously indicated in the federal portion of this report, however, we estimate that 9.4 percent of the TANF caseload is made up of the children of illegal aliens.

Overall state spending on TANF programs amounted to about $15.2 billion in FY 2021.[175] This means that approximately $1.43 billion of those funds are the result of illegal immigration.

Meals in Schools **$376,556,000**

The federal free and reduced price meal program for K-12 students has a state matching requirement. State expenditures are much lower than they are at the federal level. To receive federal funding for subsidized school lunch programs, states must contribute matching funds equal to 30 percent of the federal funds they received in 1980. Because the matching funds requirements are frozen at 1980 levels, state required contributions are often very small relative to the federal reimbursement level.



The 1980 total cost to the federal government was approximately $3.2 billion,[176] meaning that states are required to contribute at least $960 million. As noted earlier, FAIR estimates that almost 8.3 percent of participants in this program are illegal aliens or the children of illegal aliens, meaning the total current state burden in this program would be a minimum of $79.35 million.

The USDA has indicated in the past that federal funds and required matching state funds fall about 9 percent short of the full cost of this program, leaving the rest to local school districts.[177] The budgeted cost of this program was $19.7 billion during the pre-pandemic year of 2019 (this combines the federal expenditures of $18.8 billion and the $960 million in required state contributions), implying a shortfall of $1.77 billion. The illegal alien-attributable share of this is $147 million. With the budgeted state share attributable to illegal immigration, the total comes out to slightly over $226 million.

Moreover, to fully account for the costs of providing free or low-price school meals to the children of illegal aliens (both foreign and U.S.-born) we must consider recent temporary funding measures and account for more permanent spending which began during the COVID-19 pandemic. As mentioned in the federal section, from 2020 to 2022 federal spending was significantly, but temporarily, increased to allow all pupils to receive free school lunches and breakfasts. Once these benefits expired as of the 2022-2023 school year, some states decided to either extend free school meals using their own funds (e.g., Massachusetts, Nevada, Vermont) or permanently implement state-funded universal free school meals (California, Colorado, Maine).[178] California committed to allocating $650 million annually to this program; Colorado's program costs $100 million per year (and is being funded by limiting state income tax deductions for households making more than $300,000 a year); and Maine's program is estimated to cost $34 million annually.[179] FAIR estimates that the additional costs of these programs attributable to the children of illegal aliens amount to $150 million annually.[180] In total, the state-level burden of illegal aliens on school meal funds amounts to $376.6 million.

Supplemental Security Income (SSI) and other Cash-Related Welfare Programs

In addition to federal funding and federally-administered state supplements, most states also administer their own supplemental SSI payments. Delaware, the District of Columbia, Iowa, Pennsylvania, and Rhode Island pay out both Social-Security-Administration-administered state supplements as well as their own.[181] Because these state-administered programs vary from state to state, and many of them do not release ample budgetary information, FAIR does not endeavor to estimate what proportion of these funds are attributable to illegal immigration.

Total State Welfare Expenditures	
Child Care and Development Fund (CCDF)	$171,033,000
Temporary Assistance to Needy Families (TANF)	$1,432,105,000
Meals in Schools	$376,556,000
Total Welfare Expenditures	$1,979,694,000



Total State Expenditures

Total State Expenditures

The total fiscal burden of illegal immigration on state taxpayers has now reached a staggering $115.6 billion, which is 30 percent more than it was in 2017. The primary reasons for this, aside from a rapid increase in the illegal alien population, are that a number of states have opted to expand access to state welfare, education, and medical programs to illegal aliens. These expansions have led to taxpayers paying tens of billions in additional funding to cover these costs.

Concerningly, as will be seen in the following section, the taxes paid by illegal aliens to state and local governments fall far short of making up for the numerous additional state-funded benefits they are receiving. Moreover, with many states set to begin offering even more benefits to illegal aliens, as mentioned previously, these costs are only expected to increase even further.

Total State and Local Expenditures	
Total Education Expenditures	$73,190,760,000
Total Medical Expenditures	$21,811,439,000
Total Administration of Justice Costs	$18,626,836,000
Total Welfare Expenditure	$1,979,694,000
State and Local Total	$115,608,729,000



State and Local Taxes Collected

State and Local Taxes Collected

As with federal costs, state and local costs are offset - to some degree - by the taxes illegal aliens pay. As noted in the Federal taxes portion of this section, proponents of illegal immigration argue that the taxes paid by illegal aliens result in a net boon to state and local coffers. However, this is a spurious argument. Evidence shows that the tax payments made by illegal aliens fall far short of covering the costs of the services they consume.

It is also important to note that calling illegal alien tax payments a net receipt is a mischaracterization. The overall wage depression inflicted on local labor markets by the presence of large numbers of illegal aliens willing to work for less than market rates has far-reaching fiscal implications that are often not quantified on average balance sheets. Low-wage workers generally access more government benefits than higher-paid employees. Furthermore, illegal aliens also tend to remit large portions of their earnings back to their home countries, and thus less money is incorporated back into local economies and less is paid in local sales and excise taxes. However, because this study looks at the fiscal impacts of illegal immigration, and tax collections are a fiscal offset, we do our best to estimate how much of the fiscal costs borne by taxpayers are reduced by taxes paid by illegal aliens.

Illegal aliens are not typical taxpayers. First, the large percentage of illegal aliens who work in the underground economy avoid paying any income tax at all. Those that do work in the formal economy often receive back more than they pay to the federal government through refundable tax credit programs. Finally, the average earnings of illegal alien households are considerably lower than earnings of legal aliens and native-born workers, thus they typically fall into the lowest tax brackets.

Disposable Income Profile of Illegal Aliens at the State and Local Level

FAIR estimates there are about 7.9 million illegal aliens participating in the aboveground economy, with approximately 7.5 million currently employed.[182] As noted previously, the average household headed by an illegal alien earns approximately $40,800 annually. However, those working in the underground economy are estimated to earn far less.

Since a significant portion of state and local taxes are levied on spending instead of income, in forms such as sales and excise taxes, it's important to recognize the negative impact of remittances on the amount of state and local taxes collected. The term "remittances" in the context of illegal immigration refers to money earned in the United States that is transferred to relatives, friends or business associates who still live abroad.[183] A 2019 FAIR study estimates that the average illegal alien remits approximately 20 percent of their gross income out of the country. This comes out to approximately $8,160.[184]

Remittances by both lawful and illegal aliens harm state and local governments, as they lower overall disposable income, local spending, and related revenue. Despite this lower disposable income, illegal aliens still often use state and local services that rely on spending-based taxation at rates similar to native-born citizens. These include services such as fire and police assistance, public roads, other public transportation infrastructure, and public schools.

Currently, only Oklahoma has a "remittance tax," which places a $5 or 1 percent fee (whichever is greater) on all outgoing, out-of-state money transfers.[185] This tax helps the state recoup lost tax dollars stemming from income sent out of the state primarily by immigrants, including illegal aliens. It is estimated that if a similar tax were instituted nationwide, the federal and/or state governments could recoup more than $2 billion in lost tax revenue from migrants remitting their income to other countries.[186]

Factoring in remittances, we construct the disposable income profiles of illegal aliens by first estimating their incomes in each state. We then account for the sum of federal taxes paid versus credits received,[187] as well as the amount of state income taxes paid (in states that have a state income tax) versus credits received. Finally, other state taxes, such as property tax, must be considered. Based on the methodologies detailed in the Federal taxes portion of this study, as well as the forthcoming sections on specific state taxes, the average illegal alien has a disposable income of approximately $28,144 annually.

Income Tax Receipts **$5,728,653,000**

As noted in the Federal portion of this cost study, most illegal alien households will have little income tax liability, if any at all, and millions more avoid liability by working in the "underground economy." For the most part, this holds true at the state level as well.

Nearly 30 percent of all illegal aliens in the United States reside within the nine states without a state income tax: Texas, Florida, Nevada, Washington, Wyoming, Tennessee, New Hampshire (which only taxes dividends and interest), Alaska, and South Dakota.[188] In California, where approximately 21 percent of the nation's illegal aliens reside, the tax bracket for those making the estimated wage for illegal alien households in the state is a measly 2 percent.

In addition, FAIR estimates that 25 percent of all illegal alien households work in the underground market. This means that a significant majority of illegal aliens will pay little or no state income tax.

FAIR estimates the total amount of state income taxes paid by illegal aliens by adjusting the nationwide average income per illegal alien household higher or lower for each state based on how much the average income varies from the overall national average.[189] We then analyze the tax rates for each of these states, minus standard deductions, to determine the effective average tax bracket for illegal alien households in each state.[190] After using this data to determine the average amount paid per household, we multiply that number by the estimated total number of tax-paying illegal alien households employed in the aboveground economy.[191] Nationwide, that total comes out to approximately $5.7 billion.

Property Tax Receipts **$3,152,993,000**

Families who own residences are subject to property taxes. Individuals living in rental property do not pay property taxes directly, although their monthly rent is likely calculated to subsidize a portion of their landlord's property taxes.

For states that host the largest number of illegal aliens, property taxes hover right under the 1 percent mark. In addition, in many states like Texas and Florida, property can be purchased at prices considerably lower than the national average.

Of course, illegal alien households are far less likely to be homeowners than U.S. citizens. According to the Pew Research Center, illegal alien households are half as likely to own property as native-born households.[192] Based on data from the 2020 ACS, approximately 70 percent of all households owned their own property. This means that, most likely, about 35 percent of illegal alien households own property.[193] According to the Wells Fargo Home Affordability Calculator,[194] an illegal alien household making the average wage in a city with an average cost of living index would be able to afford a residence costing

no more than $150,000. Using this as the mean home value and an average annual property tax of 0.90 percent, it can be estimated that illegal aliens pay approximately $3.2 billion annually in property taxes.

State Fuel Taxes **$1,440,000,000**

The average state fuel tax for the United States comes out to 38.69 cents per gallon, according to the American Petroleum Institute.[195] Average fuel taxes have remained significantly more stable than the national gas price average, which currently fluctuates around $3 per gallon, excluding a significant drop during much of 2020 due to the COVID-19 pandemic. The overall average price for unleaded gasoline at the end of 2022 was approximately $3.20 per gallon.[196] As noted earlier in this report, the average American purchased approximately 592 gallons of gasoline in 2021, and we estimate that the average illegal alien purchased approximately 414 gallons under the assumption that they drive somewhat less on average than U.S. citizens and lawfully present migrants.

Based on these calculations, the average illegal alien driver spends somewhere around $1,325 annually on fuel, $160 of which would go to state-level fuel taxes. Based on our earlier estimate that there are about 9 million illegal alien drivers in the United States, this means that they contribute approximately $1.4 billion in state fuel taxes. This considerable increase since our last report is due to the fact that an increasing number of illegal aliens are comfortable driving due to the significant increase in the number of states that offer driver's licenses to illegal aliens.

State Sales and Excise Tax Receipts
$4,850,494,000

To calculate state sales and excise tax receipts, we take an alien's total disposable income, then determine what percentage of that will be spent on goods and services that are subject to the tax. We then estimate the overall average sales and excise tax rate for the average illegal alien based on their population distribution and the applicable tax rates in each state.



In almost every state, staple groceries and most other food items are exempt from sales tax. According to the USDA, the average family spent approximately 10.3 percent of their disposable personal income on groceries in 2021.[197] For

illegal alien households, this amounts to $2,896 annually. However, due to their lower average income, it can be assumed that they likely spend a higher proportion of their income on groceries.

Fuel and housing taxes are included separately in this report, so spending on those categories should be subtracted as well. The average illegal alien spends about $1,325 annually on fuel, as mentioned previously. The Bureau of Labor Statistics (BLS) estimates that the average American family spends 25.9 percent of their gross income on housing.[198] This totals approximately $10,567 for illegal aliens. Again, since their incomes are significantly lower than the average American citizen, it's almost certain that housing costs account for a greater proportion of their budget.

There are other categories that may be exempt from sales tax in certain states. For example, many digital items such as streaming services, e-books, and digital copies of music and movies are exempt in many states. Other states exempt certain categories of clothing from sales tax. In addition, many states have sales tax holidays. It is difficult to estimate how much illegal aliens are spending on these items.

Based on the above analysis, we believe a safe assumption is that no more than 30 percent of the disposable income from illegal alien households goes toward purchasing goods and services that are subject to sales tax. So, based on the population distribution of illegal aliens,[199] their average income, and the corresponding tax rates in each state,[200] we estimate that illegal aliens pay a total of $4.9 billion annually in sales and excise tax nationwide.[201]



Net State Impact of Illegal Aliens

Total State Tax Receiptss	
Income Tax Receipts	$5,728,653,000
Property Tax Receipts	$3,152,993,000
Fuel Tax Receipts	$1,440,000,000
Sales and Excise Tax Receipts	$4,850,494,000
Total State Taxes Paid	$15,172,140,000

The state tax payments made by illegal aliens fall far short of the costs incurred by their presence, as detailed below. These figures negate the argument that illegal aliens represent a net economic benefit to the United States.

Total State and Local Expenditures	$115,608,729,000
Total State and Local Tax Receipts	-$15,172,140,000
Net State and Local Fiscal Impact	$100,436,589,000

Part III: Total Federal and State Fiscal Outlays

At the federal, state, and local levels, taxpayers shell out approximately $182 billion to cover the costs incurred by the presence of more than 15.5 million illegal aliens, and about 5.3 million citizen children of illegal aliens. That amounts to a tax burden of approximately $8,730 per illegal alien family member. These figures are before taxes paid by illegal aliens are factored in. The totals with taxes factored in are as follows:

Total Expenditures	
Total Federal Expenditures	$66,449,136,000
Total State and Local Expenditures	$115,608,729,000
Total National Expenditures	$182,057,865,000

Net Tax Contributions	
Net Federal Taxes Paid	$16,219,495,000
Net State and Local Taxes Paid	$15,172,140,000
Total Net Tax Contributions	$31,391,635,000

Total Cost of Illegal Immigration	
Total National Expenditures	$182,057,865,000
Minus Total Tax Contributions	$31,391,635,000

Total Fiscal Cost of Illegal Immigration on U.S. Taxpayers:	**$150,666,230,000**

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[99] This figure was derived primarily by examining the demographics estimated to have the skills and opportunity to participate in higher earning occupational fields. We estimated this figure by tracking available information pertaining to individuals with "unmatched arrival records" in high-earning visa categories, such as B-1, H-2B, visa-waiver visitors for business, and other minor business-related visa categories, as well as visa overstay data as reported by DHS. We then adjusted these numbers to account for individuals who are believed to have left the country, and applied our estimated labor force participation and unemployment rates to the final total.

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[115] "Spotlight on SSI Benefits for Noncitizen-2022 Edition", Social Security Administration, https://www.ssa.gov/ssi/spotlights/spot-non-citizens.htm

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[117] Since the federal government continues to delay the implementation of REAL ID (which would bar most illegal aliens from flying), and an increasing number of states offer driver's licenses to illegal aliens, it's likely that a growing number of illegal aliens are now using air travel as a means to move around the country. However, since most illegal aliens are low-income earners, it is still unlikely that a large portion of them can regularly afford to travel by air, meaning that their tax contributions (currently 7.5 percent of the base ticket cost) would be relatively limited.

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[131] "The Elephant in the Classroom: Mass Immigration Imposing Colossal Cost and Challenges on Public Education", FAIR, https://www.fairus.org/issue/illegal-immigration/elephant-classroom-mass-immigration-imposing-colossal-cost-and-challenges

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[134] The Elephant in the Classroom, FAIR

[135] *Plyler v. Doe*, 457 US 202 (1982), https://www.oyez.org/cases/1981/80-1538

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Chairman ARRINGTON. Thank you, Ms. Kirchner. Now, we will yield five minutes to Mr. Blair for his opening statement.

STATEMENT OF AMMON BLAIR, SENIOR FELLOW, TEXAS PUBLIC POLICY FOUNDATION'S "SECURE AND SOVEREIGN TEXAS" INITIATIVE

Mr. BLAIR. All right. Dear Chairman Arrington, Ranking Member Boyle, and distinguished Members of the Committee, good morning and thank you for inviting me to testify before you.

As a Senior Fellow at the Texas Public Policy Foundation, I bring 22 years of military experience and a deep understanding of border security, for my time in the Army and U.S. Border Patrol. My roles have ranged from Infantry Officer in Operation Lone Star, to Collateral Intelligence Agent, and also Marine Border Patrol agent.

Today, we stand at a pivotal moment in the history of Texas, facing unprecedented challenges that threaten the very fabric of our state and nation. Texas shares 1,254 miles of border with a failing state, besieged by an authoritarian regime that not only sponsors terrorism, but also allows cartels to wield a spectrum of warfare, undermining the rule of law and jeopardizing the safety of our communities.

The Mexican cartels are foreign terrorist organizations and have extended their nefarious operations beyond the border, infiltrating every major city and many towns across Texas. The threats we face are not isolated. They are intricately linked to global adversaries, including state actors like China, Russia, and Iran, and non-state entities such as Hezbollah, Hamas, MS–13, and Tren de Aragua. For example, the Chinese Communist Party has weaponized the Mexican cartels and used them as proxies in their drug warfare on American society. The CCP is supplying the cartels with precursor chemicals and synthetic drugs such as fentanyl. The Mexican cartels have built a silk road from Mexico across the border and into every state, county, and community in the United States, enabling the CCP's insidious strategy of drug warfare.

The Federal Government's deliberate inaction to counter the national security threats has not only exacerbated the border crisis, but the Federal Government is actively weaponizing mass migration and disinformation to erode the very foundations of our sovereignty and stability. This manufactured humanitarian catastrophe has overwhelmed the Federal agencies, leaving them unable to fulfill their primary mandate of protecting the American people.

As a result, Texas has been left to fend for itself against an unrelenting invasion of complex and evolving threats that threaten the fabric of our society. The Federal Government has broken the compact between the United States and the states. The Executive Branch has a constitutional duty to enforce Federal laws protecting states, but it has failed to do so. The Preamble of the Constitution outlines the chief responsibility of the Federal Government to ensure domestic tranquility and provide for the common defense. Article IV, Section 4 provides "the United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against an Invasion."

Despite these clear mandates, the Biden Administration has not only failed to secure our borders, but has actively undermined the

efforts of states, like Texas, to protect their citizens. The administration's unlawful and unconstitutional commitment to the U.N.'s global compact for safe, orderly, and regular migration prioritizes humane migration over the rule of law.

Recently, a total of more than $7.4 billion in U.S. tax dollars has been allocated to the State Department for Migration and Refugee Assistance in Fiscal Year 2024. This staggering sum highlights the administration's misplaced priorities, focusing on facilitating mass migration rather than securing our borders and protecting our citizens, all funded by Congress.

The Department of Homeland Security has neglected its primary mission, as outlined in the Homeland Security Act of 2002. By prioritizing the facilitation of weaponized migration and importation of millions of foreign nationals into the U.S., DHS has failed to secure the border. DHS's own definition of security is as follows. The collective use of programs, plans, procedures designed to protect the nation's citizenry and infrastructures from malevolent attack and ensuring the continuation of normal operations.

For these reasons, Governor Abbott has declared an invasion under Article I, Section 10, Clause 3, to invoke Texas constitutional authority to defend and protect itself. The consequences of DHS's failure are evident in the staggering data on opioid and drug epidemics impact on Texas.

Just this week, Austin Travis County Emergency Medical Services responded to a total of 75 overdose cases from Monday to Wednesday evening this week, resulting in nine overdose deaths. Typically, the county only sees two to three overdose deaths a day.

Our economic impact, $50.1 billion each year towards the opioid crisis. Hospitals are facing $202-per-capita of costs associated with this and those with the loss of life, $706-per-capita of cost. The fact that this same Federal Government acts more forcefully now against Texas than it ever has against the Mexican cartels and the border security crisis tells you that everything you need to know about what we face today, we don't just have a crisis at the border, we also have a crisis of constitutional governance.

In closing, I implore this body to commit to the utmost priority of protecting our citizens. The future of our great nation depends on our focus against this common enemy. May history remember this day as the essential moment when our nation united to end the Mexican cartels, all national security threats emanating from the border, protecting American citizens, and secure a brighter future for generations to come.

Thank you, and I look forward to addressing your questions.

[The information follows:]



May 8, 2024

Testimony Before the U.S. House of Representatives Budget Committee

Ammon S. Blair, Senior Fellow

Dear Chairman Arrington, Ranking Member Boyle, and Distinguished Members of the Committee:

Good morning and thank you for inviting me to testify before you.

As a Senior Fellow at the Texas Public Policy Foundation, I bring 22 years of military experience and a deep understanding of border security from my time in the U.S. Army and U.S. Border Patrol. My roles have ranged from Infantry Officer in Operation Lone Star to Collateral Intelligence Agent and Marine Border Patrol Agent. I've been on the frontlines of combating drug trafficking and illegal immigration, and I have also coordinated efforts for border wall construction. My career has been dedicated to protecting our nation from threats at our international borders.

Today, we stand at a pivotal moment in the history of Texas, facing unprecedented challenges that threaten the very fabric of our state and nation. Texas shares a 1,254-mile border with a failing state, besieged by an authoritarian regime that not only sponsors terrorism but also allows cartels to wield a spectrum of warfare, undermining the rule of law and jeopardizing the safety of our communities.

These cartels, recognized as foreign terrorist organizations, have extended their nefarious operations beyond the border, infiltrating every major city and many towns across Texas. The threats we face are not isolated; they are intricately linked to global adversaries, including state actors like China, Russia, and Iran, and non-state entities such as Hezbollah, Hamas, MS-13, and Tren de Aragua.

The federal government's deliberate inaction has not only exacerbated the border crisis but has actively weaponized mass migration and disinformation to erode the very foundations of our sovereignty and stability. This manufactured humanitarian catastrophe has overwhelmed our federal agencies, leaving them unable to fulfill their primary mandate of protecting the American people. As a result, Texas has been left to fend for itself against an unrelenting invasion of complex and evolving threats that threaten the fabric of our society.

Despite their valiant efforts, our brave Texas law enforcement officers find themselves outgunned, outmaneuvered, and outfunded by the ruthless Mexican Cartels that have exploited the chaos at our border. The cartels, encouraged by the federal government's abdication of

responsibility, have transformed our border region into a lawless no-man's land where violence, trafficking, and despair reign supreme. Our men and women in uniform risk their lives daily to stem the tide of illegal immigration and protect our communities. Still, they cannot succeed without our government's support and resources.

We, the proud people of the Republic of Texas, have the right and the sacred duty to defend our nation and the values that have made us great. We cannot stand idly by as our border crisis metastasizes into a national catastrophe that threatens to unravel the very bonds that unite us as Americans. We must act with courage and conviction before it is too late to save our beloved state and our cherished way of life.

I stand here today as a Texan, as an American, to demand that our federal government fulfill its constitutional obligation to secure our borders and protect our people.

The Weaponization of Mass Migration: A Clear and Present Danger to the United States and Texas

The surge of illegal aliens at the southern border is not a mere humanitarian crisis but a deliberate strategy of weaponizing mass migration to undermine the sovereignty, security, and stability of the United States. This insidious form of hybrid warfare exploits the vulnerabilities of liberal democracies that are bound by international norms to protect refugees and asylum seekers. Disturbingly, it appears that the U.S. federal government under the Biden administration is now employing this tactic against its states, particularly Texas.

The Playbook of Weaponized Mass Migration

There are many examples of governments using this tactic against their adversaries, such as Cuba in the 1980 Mariel boatlift and Iraq in the 1991 Kurdish exodus. States and nonstate actors have resorted to this tactic at least 81 times—and possibly many more—since the advent of the 1951 Refugee Convention, which granted those fleeing political persecution the right to seek asylum in states that are signatories to the agreement.

In recent years, foreign adversaries have honed the art of weaponizing migration to destabilize target nations, as exemplified by the Belarusian dictator Alexander Lukashenko's actions against the European Union in 2021. Lukashenko executed this strategy through a five-step process:

1. Encouraging migration: Lukashenko's regime lured foreign nationals from the Middle East and Africa to Belarus with false promises of easy EU entry. Belarusian state-owned travel agencies and airlines promoted "tourist visas" and organized flights to Minsk.
2. Facilitating border crossings: Belarusian forces guided the foreign nationals to the borders of Latvia, Lithuania, and Poland, often providing them with tools to breach border fences. This deliberate funneling of foreign nationals to the borders created a humanitarian crisis and pressured the neighboring countries.
3. Instrumentalizing human suffering: Lukashenko exploited the foreign nationals' desperate situation to generate international attention and pressure the EU. Many foreign nationals

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were left stranded in harsh conditions along the borders, with limited access to food, water, and shelter
4. Hybrid warfare tactics: The manufactured humanitarian crisis was part of Lukashenko's broader hybrid warfare strategy to destabilize the region and retaliate against EU sanctions imposed on Belarus. This tactic aimed to sow discord within the EU and undermine its unity.
5. Disinformation and propaganda: Belarusian state media and pro-Lukashenko outlets spread disinformation about the crisis, blaming the EU and neighboring countries for the foreign nationals' plight. This propaganda sought to shift responsibility away from the Belarusian regime and further manipulate the situation.

The weaponization of mass migration and the manufacturing of a humanitarian crisis by Lukashenko's regime strained the resources and border security of Latvia, Lithuania, and Poland, as well as tested the EU's ability to respond to such hybrid threats. The crisis highlighted the vulnerability of these countries to politically motivated migration pressures and underscored the need for a coordinated EU response to counter such tactics. Ursula von der Leyen, President of the European Commission, described the situation as "not a migration crisis" but a "hybrid attack." She said, "This is an attempt by an authoritarian regime to try to destabilize its democratic neighbors. This will not succeed."

The Biden Administration's Adoption of Weaponized Migration
Shockingly, the Biden administration has followed this same playbook to weaponize mass migration against border states like Texas:

1. **Encouraging migration:** The Biden administration has actively encouraged unprecedented levels of illegal immigration through a series of policies, agreements, and executive orders. The "Los Angeles Declaration on Migration and Protection," signed in June 2022, laid the groundwork for a regional approach to migration that prioritizes "humanitarian protection" over border security and national sovereignty. In January 2023, the administration doubled down on this flawed approach with the "Declaration of North America" (DNA), a joint statement with Mexico and Canada that affirmed a commitment to "safe, orderly, and humane migration." However, the declaration's emphasis on expanding "legal" pathways is a thinly veiled attempt to normalize and facilitate mass migration, disregarding the rule of law and the integrity of our borders. The administration's policy agenda has been further shaped by executive orders like "Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border" (EO 14010). Signed in February 2021, this order laid the groundwork for a more permissive approach to illegal immigration, focusing on addressing "root causes" and expanding access to asylum rather than deterring unlawful entry. These policies and agreements have been accompanied by public messaging from the President and top administration officials that have sent a clear signal to potential illegal aliens worldwide: the southern border is effectively open. By repeatedly emphasizing "compassion" and "humanity" over security and the rule of

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law, the administration has given the green light to unprecedented numbers of foreign nationals attempting illegal entry into the United States.

2. **Facilitating border crossings:** In recent months, the Biden administration has taken unprecedented steps to facilitate illegal border crossings, effectively aiding and abetting the weaponization of mass migration against the United States. The Department of State has committed a staggering $7.4 billion to U.N. "migration and refugee assistance" agencies and NGOs, which is being used to encourage and enable illegal immigration. Under the CHNV parole program, the Department of Homeland Security has flown over 400,000 inadmissible aliens directly into the U.S. interior, bypassing normal immigration processes and border security measures. This represents a flagrant abuse of the parole authority, which is meant to be used sparingly on a case-by-case basis for urgent humanitarian reasons or significant public benefit, not as a mass immigration tool. Moreover, the administration has diverted $1.4 billion in funding from constructing critical border barriers instead of prioritizing environmental policies and maintenance repairs. This decision has left vast stretches of the border unprotected, making it easier for illegal immigrants, drug smugglers, and potential terrorists to enter the country undetected. Compounding these actions, the administration has continued to implement catch-and-release policies, expanded alternatives to detention, and offered extensive taxpayer-funded benefits to illegal immigrants. These incentives have acted as powerful magnets for further illegal immigration, encouraging more people to undertake the dangerous journey to the southern border in hopes of being released into the U.S. interior. The combination of these policies has effectively opened the floodgates for illegal immigration.
3. **Instrumentalizing human suffering:** The Biden administration has allowed the border crisis to spiral out of control, with the U.N. now considering the US-Mexico border the world's deadliest migration land route due to the treacherous terrain, ruthless transnational criminal organizations and brutal Mexican cartels. In 2022 alone, a record 853 migrants died attempting to cross the border, a 52% increase from 2021. This manufactured humanitarian catastrophe has overwhelmed the capacity of the U.S. Border Patrol and local communities, diverting critical resources and attention away from vital national security priorities. Consequently, the federal government's focus has shifted from securing the border to providing humanitarian relief, leaving border states, counties, and municipalities to bear the brunt of countering the myriad national security and public safety threats emanating from the border. This includes combating human trafficking, drug smuggling, and potential terrorist infiltration while also protecting American citizens and private property from the fallout of the crisis. Disturbingly, the administration appears to be exploiting the suffering of illegal immigrants as political pawns in a cynical gambit to reshape the nation's demographics and electoral landscape.

   By overwhelming border communities with unmanageable waves of migration, the federal government is effectively outsourcing the costs and consequences of its reckless policies to states like Texas, which are left to grapple with the social, economic, and security implications of unchecked illegal immigration. The human toll of this instrumentalization of suffering is staggering, with illicit aliens falling victim to dehydration, exposure, drowning, and violence at the hands of cartels and smugglers. In

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June 2022, 53 illegal aliens perished from heat exhaustion in an abandoned tractor-trailer in San Antonio, the deadliest human smuggling incident in U.S. history. Such tragedies are the direct result of the Biden administration's policies that have incentivized and facilitated illegal border crossings, enriching criminal organizations while endangering countless lives. As the situation continues to deteriorate, it is clear that the federal government is not only failing in its fundamental duty to secure the nation's borders but is actively undermining the efforts of states like Texas to protect their citizens and territorial integrity. This dereliction of duty represents a profound betrayal of the public trust and a direct threat to our national sovereignty and security.

4. **Hybrid warfare tactics:** The Biden administration's weaponization of mass migration against Texas has reached alarming levels, amounting to a form of hybrid warfare that threatens the state's sovereignty, security, and resources. By deliberately flooding Texas with illegal immigrants and hamstringing its ability to defend its borders, the federal government has effectively ceded control of the border region to the ruthless Mexican cartels.

   This abdication of responsibility has left Texas uniquely vulnerable, as approximately 95% of the land along its 1,254-mile international border with Mexico is privately owned. This represents a significant portion of the U.S.-Mexico frontier, with Texas accounting for about 64% of the total border length. The federal government's failure to secure this vast expanse has burdened state and local law enforcement agencies, private landowners, and ranchers. Over three years into this crisis, 55 Texas counties have declared an invasion, and over 60 have issued disaster declarations.

   Many county resolutions cite the invasion clauses of the U.S. Constitution, Articles IV, Section 4, which require the federal government to protect states from an invasion. They also cite Article IV, Section 7 of the Texas Constitution, which states the governor has the legal authority to command Texas military forces and call them up to "suppress insurrection and to repel invasions."

   Texas Department of Public Safety (DPS), county sheriffs, and local law enforcement are now forced to serve as the first line of defense against the formidable threats posed by smuggling organizations, transnational criminal organizations (TCOs), and Mexican cartels. Since the launch of Operation Lone Star, the multi-agency effort has led to over 509,000 illegal immigrant apprehensions and more than 42,300 criminal arrests, with more than 37,500 felony charges. In the fight against the fentanyl crisis, Texas law enforcement has seized enough lethal doses of fentanyl to kill every man, woman, and child in the United States and Mexico combined during this border mission.

   Texas has also transported:

- Over 12,500 migrants to Washington, D.C., since April 2022
- Over 43,800 migrants to New York City since August 2022
- Over 35,600 migrants to Chicago since August 2022

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- Over 3,400 migrants to Philadelphia since November 2022
- Over 18,600 migrants to Denver since May 18
- Over 1,500 migrants to Los Angeles since June 14

Though valiant in their efforts, Texas law enforcement is outgunned, outmaneuvered, and out funded. The Texas Department of Public Safety cannot counter this hybrid threat environment alone.

The cartels, flush with billions in illicit profits and armed with military-grade weapons, have exploited the chaos at the border to expand their operations and tighten their grip on both sides of the frontier. As a result, private landowners and ranchers along the border have been left to fend for themselves, facing the constant threat of armed incursions, property damage, and violence. Many have been forced to arm themselves and invest in expensive security measures, becoming their first responders in the face of a relentless onslaught.

The Biden administration's refusal to address this crisis has not only jeopardized the safety and livelihoods of Texas residents but has also allowed the cartels to solidify their control over crucial smuggling corridors and expand their influence deep into the U.S. interior. This poses a grave threat to national security, as the cartels are known to collaborate with terrorist organizations and foreign adversaries seeking to infiltrate the United States.

5. **Disinformation and propaganda:** The Biden administration has engaged in a concerted campaign of disinformation and propaganda to undermine Texas' efforts to secure its border and protect its citizens from the devastating consequences of uncontrolled illegal immigration.

   By falsely accusing Texas of human rights abuses and downplaying the immense costs and dangers of the border crisis, the administration seeks to erode public support for the state's legitimate security measures and impose extreme hypocrisy costs. Central to this campaign is the administration's use of lawfare, which involves weaponizing legal systems and international norms to achieve political objectives.

   Recent examples include the marine barrier case, in which the administration sued Texas for using buoys to deter illegal crossings, and the Texas Border Wire case, a case brought by the state of Texas to stop Biden's CBP from destroying portions of a 29-mile section of concertina-wire ("c-wire") barriers erected by the state along the Rio Grande in Maverick County to deter illegal migrants.

   In both instances, the administration sought to portray Texas' actions as violations of human rights and international law even though the state was acting within its sovereign authority under Article 4, Section 4 and Article 1, Section 10, Clause 3 of the U.S. Constitution, to protect its borders and prevent loss of life. By distorting these cases'

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legal and moral context, the administration aims to paint Texas as a rogue state indifferent to human suffering and the rule of law.

The goal of this disinformation campaign is to generate national and international condemnation of Texas, mobilizing pressure on the state to abandon its efforts to secure the border. By portraying Texas as a pariah state that is violating human rights and international norms, the administration hopes to force the state to choose between enforcing its borders and maintaining its moral standing in the national community.

For example, on May 1, 2024, U.S. Representatives Greg Casar (TX-35), Joaquin Castro (TX-20), and 30 of their colleagues released a letter to the House Committee on Appropriations Homeland Security Subcommittee, urging them to direct federal agencies not to participate in or support the implementation of Operation Lone Star in Texas or similar efforts in other states in the Fiscal Year 2025 appropriations bill. They claim that "OLS is misappropriating the criminal justice system, wasting resources, contributing to broad harms, including increased racial profiling of border residents and the violation of their rights, and contributing to the injuries and deaths of scores of migrants and US citizens."

This cynical use of lawfare and disinformation represents a direct assault on Texas' sovereignty and its ability to protect its citizens from the ravages of uncontrolled illegal immigration. By weaponizing hypocrisy costs and exploiting the bias of international institutions and media outlets, the administration seeks to undermine the state's resolve and erode public support for border security.

In this way, the Biden administration's actions are very similar to Russian and Belarusian orchestrated actions to use illegal aliens as a means of coercion to "influence the behavior of their targets by exploiting the existence of competing domestic interests within the target state(s) and by manipulating the costs or risks imposed on their civilian population(s)."

Vetting Failures, National Security Risks, and Policy Solutions

In the last three years, the United States has witnessed an alarming surge in illegal border crossings, with thousands of migrants arriving every day. Disturbingly, the current vetting and screening process for these illegal aliens is woefully inadequate, inconsistent, and in violation of federal law. This broken system not only undermines the rule of law but also exposes the nation to grave threats from criminals and terrorists.

The scale of the problem is staggering. In just the first two days of May 2024, more Chinese nationals entered the U.S. illegally than in all of 2021. Despite this massive influx, the Department of Homeland Security (DHS) has drastically simplified the vetting process for Chinese illegal aliens, reducing the number of interview questions from roughly 40 to a mere five in April 2023. This reckless decision makes it easier for the Chinese Communist Party (CCP) to exploit our immigration system. It enables the administration to prioritize "processing

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efficiency" over national security by pushing illegal aliens out of Customs and Border Protection (CBP) custody as quickly as possible.

Federal immigration law, specifically 8 U.S.C. § 1222(a), requires the government to detain all illegal aliens "for a sufficient time to enable the immigration officers and medical officers to subject such aliens to observation and an examination sufficient to determine whether or not they belong to inadmissible classes." However, U.S. Border Patrol (USBP) agents are circumventing this legal obligation by invoking prosecutorial discretion under 8 C.F.R. § 287.3, which allows them to release illegal aliens into the U.S. without placing them in removal proceedings. This practice, known as "street releases," is witnessed in the San Diego Sector and other border areas.

The consequences of this lax vetting and screening process are dire. It creates loopholes and incentives for illegal aliens to enter the country illegally without proper documentation or verification, allowing criminals and terrorists to exploit the system and evade detection. The DHS has confirmed that some apprehended illegal aliens have ties to transnational criminal organizations, such as Mexican cartels and transnational criminal organizations like Tren de Aragua, as well as links to terrorist groups like ISIS, Hezbollah, and al-Qaeda. These individuals seriously threaten national security, border security, homeland security, and public safety.

Recent incidents highlight the gravity of the situation. In April 2022, a Colombian national on the FBI watch list was mistakenly released due to Border Patrol and Immigration and Customs Enforcement (ICE) agents being overwhelmed by the increased flow of migrants. The DHS inspector general's report found that the agents couldn't follow standard protocols because they were too busy processing the surge of illegal aliens.

Another alarming case involves Mohammad Kharwin, an Afghan illegal alien on the terrorist watchlist who spent nearly a year inside the U.S. after being apprehended and released by border patrol agents. Instead of being detained as a "special interest alien" until a thorough investigation could be completed, Kharwin was released on "Alternatives to Detention" (ATD) personal recognizance papers, allowing him to move freely within the country.

The March 2023 border riot in El Paso, Texas, further underscores the vetting failures. Gabriel Enrique Angarita Carrasquero, a 22-year-old illegal alien from Venezuela accused of instigating the violent incident and assaulting a Texas soldier, remains at large in the U.S. after being released by Border Patrol under prosecutorial discretion, citing a lack of detention space.

These disturbing incidents are likely just the tip of the iceberg, with many more cases of accidental releases of terrorism suspects and members of transnational criminal organizations going unreported. The current vetting and screening process for illegal aliens at the border is not only unlawful but also dangerous, failing to uphold immigration law and protect the national interest.

The United States cannot afford to continue down this path of lax border security and inadequate vetting. The safety and well-being of the American people depend on swift and decisive action to secure our borders, enforce our laws, and protect our nation from the threats posed by illegal

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immigration. It is time for policymakers to prioritize national security over political expediency and restore integrity to our immigration system.

Critical Infrastructure

The U.S.-Mexico is one of the world's most complex and dynamic regions, with millions of people, goods, and vehicles crossing it daily. Securing this border is a vital national interest, as it affects the country's safety, economy, and sovereignty. However, the Department of Homeland Security (DHS), the agency responsible for border security, has failed to achieve complete operational control of the border, which means it cannot prevent or detect all illegal entries.

The Texas-Mexico border is difficult to monitor the multitude of terrains along the Rio Grande River. Texas counties contingent to the Mexico border encompass an area of 46,502 square miles or slightly larger than six US states (Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, and Rhode Island). The vast geographical area produces immense challenges to the ability to combat border-centric criminal activity, and law enforcement does not have the manpower or the tools necessary to combat this criminal activity effectively.

Technology is essential in protecting Texas and the nation. Detection and surveillance technologies—video, cameras, and sensors—can provide real-time information on the exact locations of criminal exploitations. Since 1970, the United States Border Patrol (USBP) has employed sensor technology to assist law enforcement in remotely detecting the presence of illegal aliens entering the United States. However, according to the U.S. Government Accountability Office (GAO), these have been proven ineffective, unreliable, and costly.

For example, GAO found that the ground sensors deployed by DHS have a high false alarm rate and are often triggered by animals, weather, or vegetation. This reduces the border agents' situational awareness and response capabilities, so they must waste time and resources investigating each alarm. Moreover, DHS has not established performance measures or standards for these sensors, making assessing their effectiveness and efficiency difficult.

Similarly, GAO found that the fences constructed by DHS have not been systematically evaluated for their impact on border security outcomes, such as apprehensions or deterrence. There is no evidence that the fences have reduced the flow of illegal crossings, as illegal aliens and smugglers have adapted to them using tunnels, ladders, cutting through them, or other methods. Furthermore, DHS has not developed a comprehensive plan to identify, prioritize, and address the maintenance and repair needs of the existing fencing, which could compromise its functionality and longevity.

Another example is the RVSS towers, fixed towers equipped with cameras and sensors that provide situational awareness to border agents. GAO found these towers have experienced technical problems, such as poor image quality, limited coverage, and frequent outages. These problems reduce the visibility and accuracy of the border agents, who must rely on other information sources or physical inspection. Additionally, DHS has not fully implemented its

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plans to upgrade and modernize the RVSS towers, which could improve their performance and capabilities.

GAO has also reported that DHS has spent billions of dollars on border security programs like the 'Secure Border Initiative' (SBInet) and initiatives but has not consistently measured or reported their effectiveness, efficiency, or return on investment. For instance, GAO found that DHS has not developed or implemented a reliable method to estimate the total cost of border security, which could help inform resource allocation and budget decisions. Moreover, DHS has not established clear and consistent goals, objectives, and performance measures for its border security efforts, which could help assess progress and identify gaps or areas for improvement.

Faced with the challenge of dramatically increasing the effective use of detection technology along the entire border region, the State of Texas has implemented Operation Drawbridge. This groundbreaking initiative utilizes low-cost, commercial, off-the-shelf technology and a sophisticated in-house software monitoring system. This innovative approach has proven affordable, flexible, and highly effective in addressing the shortcomings of the Department of Homeland Security's (DHS) acquisition and use of technology at the border.

In January 2012, a landmark Memorandum of Understanding (MOU) was signed between the Texas Department of Public Safety and the US Border Patrol, guiding the sharing of wildlife cameras and services per border security goals and principles. Initially, 350 cameras were deployed along the border and monitored using the Drawbridge software. Since then, Operation Drawbridge has forged strategic partnerships with the US Border Patrol, Border sheriffs' offices, and DPS assets, resulting in a sustained impact on Cartel narcotics and human smuggling.

From January 2015 to July 2020, these cameras have led to the seizure of 372,461 pounds of drugs, the apprehension of 286,528 illegal aliens, and the arrest of hundreds of criminal gang members, including 91 MS-13 gang members in the Rio Grande Valley between October 2018 and July 2020. Texas has also incorporated Unmanned Aerial Systems (UAS) to enhance further the state's capability to protect critical infrastructure and detect and respond to border incursions, criminal smuggling attempts, and other incidents across the state.

The cameras are monitored round-the-clock by personnel at the DPS Border Security Operations Center (BSOC), DPS Joint Operations Intelligence Centers (JOICs), DPS communications facilities, and Texas Parks and Wildlife (TPWD) dispatch centers. Real-time alerts and images are sent to participating law enforcement agencies in the areas where the cameras are deployed, enabling quick and efficient responses. This collaborative approach allows Border Patrol and local law enforcement agencies to leverage their core strengths in placing cameras in areas of detected trails and organizing rapid responses. Operation Drawbridge pioneered this technology in law enforcement, fostering a strategic, sustained team approach to combating border trafficking.

In addition to the technological advancements, Texas has also made significant progress in building a physical barrier along the border.

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Governor Greg Abbott stated, "If you look at the amount of wall already constructed and the amount of wall that's going to be under construction, Texas will have built more of the 'Trump wall' than even Trump built in the state of Texas." While former President Donald Trump constructed 458 miles of border wall across the nation's southern border, with 55 miles in Texas, the Lone Star State has already erected 23 miles of barrier. It has an additional 21 miles under construction, funded by state and private sources. As of December, at least $55 million in private donations have been dedicated to building the wall.

Border Metrics, Unmasking the Invisible Threat: Cartel Presence in Every Community

The National Defense Authorization Act for Fiscal Year 2017 (NDAA), enacted on December 23, 2016, was the first to codify border security metrics legally. Under this legislation, DHS mandates that 43 distinct measures be reported annually. Yet, these measures predominantly capture immigration statistics. By prioritizing immigration metrics, the border environment is viewed almost exclusively through the lens of immigration and migration. This limited perspective overshadows and thus undermines more extensive national security threats.

Consequently, the federal government has strategically framed the border crisis as mainly an immigration matter or humanitarian challenge. Within this context, border security effectiveness hinges on the tally of apprehensions, turnbacks, and gotaways, sidestepping broader security implications.

However, the border between the United States and Mexico is one of the world's most complex and dynamic regions. It is also one of the most dangerous, as the brutal war in Mexico has claimed over 300,000 lives since 2006. The violence perpetrated by the Mexican cartels has spilled over into the U.S. territory, affecting the security, economy, and quality of life of millions of Texans on the border and throughout the state.

The true extent and nature of this spillover violence remains unknown, mainly due to a glaring data gap that hinders our ability to measure, monitor, and respond to the threat posed by the cartels. The current data sources are inadequate, inconsistent, and unreliable, leaving us with a distorted and incomplete picture of the reality on the ground.

The primary data source on cartel-related crime and violence in the U.S. is the FBI's Uniform Crime Reporting (UCR) Program, which collects and publishes crime statistics from over 18,000 law enforcement agencies nationwide. However, the UCR program has several limitations that undermine its usefulness for capturing the full scope of cartel activity.

First, the UCR program does not have a clear and consistent definition of what constitutes a cartel-related crime. Different agencies may use other criteria and methods to identify and classify such crimes, resulting in variations and discrepancies in the data. For example, some agencies may only report crimes directly linked to the cartels, while others may include crimes indirectly or potentially related to them. Some agencies may rely on intelligence or evidence to establish the connection, while others may use assumptions or speculations.

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Second, the UCR program does not capture all the types and aspects of cartel-related crime and violence. The program only collects data on eight major categories of crimes, known as Part I offenses, which include murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. However, these categories do not cover many other forms of crime and violence that are commonly associated with cartels, such as kidnapping, extortion, human trafficking, money laundering, corruption, and intimidation. Moreover, the program does not collect data on the characteristics and circumstances of the crimes, such as the motives, methods, weapons, victims, perpetrators, and locations.

Third, the UCR program does not account for the underreporting and undercounting of cartel-related crime and violence. Many victims and witnesses of such crimes are reluctant to cooperate with law enforcement due to fear of retaliation or deportation. Many law enforcement agencies may also be unwilling to report such crimes due to lacking resources, capacity, or willingness.

The UCR program transitioned to a new data collection system, the National Incident-Based Reporting System (NIBRS), on January 1, 2021. The NIBRS system is designed to provide more detailed and comprehensive data on crime incidents, including the crime's nature, context, consequences, and characteristics of the offenders, victims, and locations. The system also collects data on 24 additional categories of crimes, known as Part II offenses, which include some of the crimes relevant to cartel activity, such as drug offenses, fraud, gambling, and prostitution.

However, the NIBRS system is not without its challenges and limitations. Implementing and maintaining the system is more complex and costly, requiring more training, equipment, and personnel. Moreover, the system does not have a specific category or indicator for cartel-related crime, leaving the identification and classification of such crimes to the discretion and judgment of the reporting agencies.

One reason why it is difficult to understand how and where the Mexican cartels and TCOs operate in the U.S. is that NIBRS does *not* capture data on drug trafficking offenses, which are one of the main activities of the cartels. According to the FBI, NIBRS collects data on 52 offenses, but none of them are specifically related to drug trafficking. Instead, NIBRS only records data on drug and narcotic violations, which are defined as "the unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance." This means that NIBRS does not distinguish between different types and levels of drug-related crimes, such as possession, distribution, or trafficking, nor does it indicate the source, destination, or quantity of the drugs involved. Therefore, NIBRS data may not reflect the full extent and impact of the Mexican cartels' U.S. operations, especially regarding their networks, routes, methods, and profits.

Another reason why it is difficult to understand how and where the Mexican cartels operate in the U.S. due to the limited scope of NIBRS is that NIBRS is not yet fully implemented and standardized across the country. Although the FBI has set a deadline of January 1, 2021, for all law enforcement agencies to transition to NIBRS, as of May 2023, only 77% of the U.S. population is covered by NIBRS-reporting agencies. This means there are still gaps and

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inconsistencies in the national crime data collection and reporting system, which may affect the quality and comparability of the data. Moreover, some states and localities may have different definitions, classifications, and reporting practices for drug-related offenses, which may also affect the accuracy and reliability of the data. Therefore, NIBRS data may not provide a comprehensive and uniform picture of the Mexican cartels' presence and activities in the U.S., especially regarding their geographic distribution and variation.

The data gap on cartel violence has severe implications for our national security and public safety. Without reliable and comprehensive data, we cannot assess the magnitude and impact of the problem, identify the patterns and trends, evaluate the effectiveness of our policies and strategies, or allocate our resources and priorities. We are flying blind in the face of a formidable and evolving enemy.

We must close the data gap on cartel violence by developing and implementing a standardized and comprehensive data collection and reporting system that can capture the full spectrum and dimension of cartel activity in the U.S. Such a system should:

- Define and operationalize what constitutes a cartel-related crime based on clear and consistent criteria and indicators.
- Collect and report data on all types and aspects of cartel-related crime and violence, including the motives, methods, weapons, victims, perpetrators, and locations.
- Account for the underreporting and undercounting of cartel-related crime and violence by encouraging and facilitating the cooperation and collaboration of victims, witnesses, and law enforcement agencies.
- Integrate and coordinate data from multiple sources and levels, such as federal, state, and local agencies and intelligence, military, and international partners.
- Analyze and disseminate data promptly and transparently to inform and support decision-making, policy-making, and public awareness.

By closing the data gap on cartel violence, we can enhance our understanding and awareness of the border region and improve our ability and readiness to secure and protect it. We can also foster a more informed and balanced dialogue and debate on the issues and challenges facing the border and the solutions and opportunities available to address them.

Mexican Cartels

The Mexican cartels are not just criminal organizations that traffic drugs, weapons, and people across the U.S.-Mexico border. They are also hybrid threat adversaries that challenge the U.S. national security and interests by using a combination of political, military, economic, social, and information means and conventional, irregular, catastrophic, terrorism, and disruptive/criminal warfare methods. They may also collaborate with other state and non-state actors that share their goals or interests.

The Mexican Cartels are Foreign Terrorist Organizations

The Mexican cartels are Foreign Terrorist Organizations with networks of factions, cells, and affiliates that operate with varying degrees of autonomy and coordination in Mexico, Texas,

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throughout the U.S., and worldwide. They constantly adapt to the changing environment and opportunities and employ conventional and unconventional methods to achieve their objectives. Some of the techniques they use include:

Conventional warfare: The Mexican cartels have access to sophisticated weapons and equipment, such as assault rifles, grenades, rocket launchers, armored vehicles, and drones. They use these weapons to engage in confrontations with the Mexican security forces, rival cartels, and vigilante groups. They also use them to intimidate and coerce the local populations and authorities and to protect their routes and territories.

The violent conflict between Mexican drug cartels and the government has continued unabated in recent years. Despite efforts by the Mexican military and police to crack down on cartel activity, the criminal organizations have only become more sophisticated and deadly in their tactics.

One recent example is the Sinaloa Cartel's use of advanced weaponry in Culiacán in October 2019. When authorities attempted to arrest Ovidio Guzmán López, the son of infamous cartel leader Joaquín "El Chapo" Guzmán, the cartel responded with overwhelming force. Heavily armed cartel members, some riding in armored vehicles, engaged in fierce gun battles with soldiers across the city streets.

The cartel fighters used a variety of military-grade weapons, including .50 caliber sniper rifles, grenade launchers, and truck-mounted machine guns. They also deployed drones rigged with explosives to attack security forces. The intense fighting left at least 13 people dead and over 20 wounded. Ultimately, authorities were forced to release Ovidio Guzmán to avoid further bloodshed.

The Culiacán battle highlighted the immense firepower and tactical capabilities of Mexico's cartels. They have access to a wide array of sophisticated weapons. These arms allow them to outgun and outmaneuver the Mexican military in many cases. The cartels also use these weapons to terrorize the civilian population, with beheadings, mass graves, and public displays of violence becoming all too common.

Despite the Mexican government's efforts to curb cartel violence, the conflict shows no signs of ending.

Irregular warfare: The Mexican cartels, while capable of engaging in direct combat with security forces, more frequently employ a variety of irregular warfare tactics to further their objectives. These tactics include ambushes, targeted killings, kidnappings, extortion, and bombings. A tragic example occurred on the morning of April 26, 2024, when journalist Roberto Carlos Figueroa was abducted after dropping his children off at school. Despite his family paying the demanded ransom, Figueroa's lifeless body was later discovered in a car in the southern Mexican state of Morelos.

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Kidnapping for ransom is a prevalent tactic employed by the cartels to generate income. They frequently target affluent businesspeople, politicians, and the families of rival cartel members. Victims are held captive in undisclosed locations and subjected to torture until the ransom is paid.

Extortion is another profitable criminal enterprise for the cartels. They extort regular payments from businesses, often threatening violence if their demands are not met. Non-compliance can lead to arson attacks, bombings, or the murder of the business owner and their family. The cartels have even infiltrated the highest echelons of government, extorting money from politicians and officials.

Targeted killings are a common occurrence, with the cartels mercilessly eliminating anyone who poses a threat to their operations. Journalists who report on cartel activities, activists who speak out against the violence, and law enforcement officers who attempt to curb the drug trade have all been targeted for assassination.

Mexico is one of the most dangerous countries for journalists in the Western Hemisphere. According to the Committee to Protect Journalists (CPJ) annual Global Impunity Index, Mexico consistently ranks among the top 10 countries with the highest number of unsolved journalist murders. CPJ has also found that Mexico has the highest number of disappeared journalists worldwide. Yet, not a single case of a missing journalist in Mexico has ever resulted in a conviction.

How and Why the Mexican Cartels Operationally Control the U.S. Border and Pose a Threat to the U.S.

The US-Mexico border is not only a physical barrier but also a battleground for a covert war between the Mexican cartels and the U.S. authorities. The cartels have devised a cunning strategy to evade detection and prosecution by creating a "sanitary zone" inside the Texas border, where they can operate with impunity and use the local population as their pawns. The cartels exploit the legal loopholes and the social vulnerabilities of the border communities, especially the minors and the gangs, to smuggle drugs, weapons, money, and people across the border. The cartels also employ sophisticated technology, such as drones, to monitor and evade law enforcement agencies. The result is a humanitarian and security crisis that threatens the stability and prosperity of both nations.

The consequences of this cartel control are devastating for both sides of the border. The cartels are responsible for countless atrocities and abuses against illegal aliens, including rape, torture, kidnapping, extortion, and murder. The cartels also pose a grave threat to the national security of the U.S., as they smuggle not only drugs but also weapons, money, and potential terrorists into the country. The cartels have also infiltrated and corrupted the local authorities and institutions along the border, undermining the rule of law and our constitutional republic.

The Mexican cartels operate in the U.S. by smuggling drugs across the border and distributing them through various networks and associates, such as gangs, dealers, and couriers. According to the DEA, the Mexican cartels control most of the illicit drug market in the U.S., and they are

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responsible for the supply of cocaine, heroin, methamphetamine, marijuana, and fentanyl. The Mexican cartels also engage in other criminal activities in the U.S., such as money laundering, kidnapping, extortion, and murder.

The Mexican cartels use different methods and routes to transport drugs into the U.S., such as tunnels, vehicles, boats, planes, drones, and human carriers. They also exploit the legal ports of entry by hiding drugs in cargo, containers, or passenger vehicles. The DEA estimates that the southwest border is the main entry point for most of the drugs coming from Mexico, especially in the states of California, Arizona, New Mexico, and Texas.

The Mexican cartels have established alliances and partnerships with various U.S.-based criminal groups, such as street gangs, prison gangs, outlaw motorcycle gangs, and domestic drug trafficking organizations. These groups act as intermediaries, distributors, or enforcers for the cartels, and they receive drugs, money, or weapons in exchange for their services. Some of the most notorious U.S. gangs that work with the Mexican cartels are Tren de Aragua, the Mara Salvatrucha (MS-13), the Barrio Azteca, the Sureños, the Norteños, and the Hells Angels.

The Mexican cartels also have cells or operatives in the U.S. who are responsible for overseeing, coordinating, or facilitating drug trafficking operations. These cells or operatives may include cartel members, relatives, associates, or hired hands who act as managers, brokers, transporters, stash house operators, or hitmen. The DEA identifies several U.S. cities where the Mexican cartels have a significant presence or influence, such as Los Angeles, Chicago, New York, Atlanta, and Houston.

The Mexican cartels pose a severe threat to U.S. national security, to every community, and to law enforcement, as they contribute to the drug abuse epidemic, the overdose deaths, the violence, and the corruption in the country.

Immigrant Communities

Communities like Colony Ridge in Texas portray microcosms of a macroscopic issue that hides in plain sight across the United States.

The surge of illegal aliens at the U.S.-Mexico border has been widely reported as a humanitarian and security crisis. But there is another aspect of this phenomenon that deserves more attention: how Mexican cartels and transnational criminal organizations exploit and terrorize immigrant communities in the U.S. through fear tactics and violence.

The Mexican cartels and TCOs like Tren de Aragua do not stop at the border. They extend their reach and influence into the U.S. territory, where they prey on vulnerable immigrant communities, especially those who are undocumented or have precarious legal status. They use various methods to control and extort these communities, such as:

- Threatening to expose or deport them to immigration authorities if they do not pay a ransom or a regular fee.
- Forcing them to work as drug couriers, money launderers, or sex workers.

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- Kidnapping, torturing, or killing their relatives in Mexico or Central America if they do not cooperate or comply with their demands.
- Recruiting or coercing their children to join their ranks as gang members or assassins5.

These practices have devastating consequences for the immigrant communities, who live in constant fear, isolation, and trauma. They also undermine the rule of law, public safety, and social cohesion in the U.S., as the cartels and TCOs create parallel structures of power and governance that challenge legitimate authorities and institutions.

Dossiers from National Geographic's docuseries 'Underworld Inc.' episodes, notably 'Human Cargo,' manifest a glimpse into the dark liaisons between Mexican Cartels and these enclave communities.

'Human Cargo' spotlights Houston, where journalists entrenched with the Sinaloa Cartel unravel a tapestry of underworld control over socioeconomic dynamics, cultural levers, and governance mechanisms. The cartel's grip extends to every societal segment, the grim narrative of a trafficked young girl serving as a chilling testament.

The U.S. cannot afford to ignore or underestimate the threat that the cartels and TCOs pose to its national security and interests, as well as to the human rights and dignity of the immigrant communities. It is time to act decisively and effectively to confront and combat this menace.

China

Derek Bernsen has suggested that "[t]he U.S. is already at war, and Great Power Competition is that war." However, China and Russia know that a direct military confrontation with the United States would be unwise.26 Therefore, they compete below the level of armed conflict by applying national power through other means. Conventional military power still matters greatly, but states—particularly nuclear-capable states—exercise their coercive power indirectly. In a sense, irregular warfare is no longer an adjunct to conventional military power. Instead, as Devin Knoll and others suggest, strategic competition requires an amalgamation of irregular and traditional warfare because irregular warfare frames conventional capabilities.

China is seeking to integrate instruments of national power including economics, demographics, information, cyber, and command and because Chinese doctrine views the use of non-military sources of energy as essential to victory in a conventional conflict." As discussed in Unrestricted Warfare, "there is nothing in the world today that cannot become a weapon, and this requires that our understanding of weapons must have an awareness that breaks through all boundaries." For example "a single man-made stock-market crash, a single computer virus invasion, or a single rumor or scandal that results in a fluctuation in the enemy country on the Internet, all can be included in the ranks of new-concept weapons." These are "still weapons in the narrow sense" because they are "capable of inficting material or psychological casualties on an enemy." And they are capable of inficting casualties because they "are closely linked to the lives of the common people." The authors of Unrestricted Warfare suggest that "people will awake to discover with surprise that quite a few gentle and kind things have begun to have offensive and

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lethal characteristics." As a result, it has been suggested that the United States needs to "increase awareness of the second-order consequences of subtle activities that may not register on a Western military planner's day-to-day radar, and of the strategic impact that the PLA intended without escalating to war."

The weaponization of mass migration is precisely this sort of gray zone activity that falls below the traditional threshold of open warfare but has substantial potential to disrupt, destabilize, or coerce countries, and in this case, States like Texas, without necessarily (or likely) drawing a military response.

The U.S. opioid crisis is not only a public health emergency but also a national security threat. Behind the scenes, the Chinese Communist Party (CCP) is weaponizing the Mexican cartels in the U.S. by supplying them with precursor chemicals and synthetic drugs, such as fentanyl, that are used to produce and traffic deadly opioids across the border. The CCP is also facilitating the money laundering and financial transactions of the cartels by using Chinese banks, businesses, and networks to move and hide their illicit profits. The CCP is exploiting the weaknesses and vulnerabilities of the U.S. drug market, border security, and law enforcement by enabling and empowering the cartels to poison and harm the American population and by undermining U.S. national security and interests.

A 2018 article from the Trumpet explained that "By turning a blind eye, at the very least, to Chinese fentanyl traffickers, the Chinese government enjoys the benefit of waging drug warfare against the Americans and weakening them. A Chinese military attack using actual chemical weapons would risk an overwhelming military response, but using the chemical weapon of illicit drugs is a subtle siege that tears at the fragile fabric of American society by attacking not its strategic vulnerabilities but its moral ones. America's self-inflicted and China-facilitated fentanyl epidemic is ripping apart families, multiplying crime, crippling the economy, and destroying the minds of the next generation of Americans."

The CCP's strategy of drug warfare is not new nor unique to the U.S. China has a long history of using drugs as a tool of political and economic domination, dating back to the Opium Wars in the 19th century, when the British Empire forced China to open its ports and markets to opium imports, resulting in widespread addiction and social unrest among the Chinese people. The CCP's founder, Mao Zedong, famously declared that "drug warfare, obtaining sudden and huge profits by spreading disaster in other countries" was one of the "three great campaigns" of the Chinese revolution, along with guerrilla warfare and propaganda warfare. The CCP has also been accused of supporting and arming communist insurgencies and terrorist groups in Southeast Asia, Latin America, and Africa by providing them with drugs and weapons in exchange for loyalty and influence.

The CCP leadership's chemical and political warfare against the U.S. coincides with a surge in the number of Chinese illegal aliens crossing the southern border without authorization. According to the U.S. Customs and Border Protection, more than 10,000 Chinese unlawful aliens have been apprehended since October 2022, compared to less than 500 in the same period in 2021. This increase may be attributed to various factors, such as the economic and social

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uncertainties and the limited personal freedoms in China, the demand for cheap labor, and the availability of smugglers in the U.S. However, some of these illegal aliens may also be victims of labor and sex trafficking, lured by false promises of jobs and opportunities in the U.S.

The CCP leadership has also operated covert police stations in several U.S. cities, such as New York, Los Angeles, San Francisco, and Houston. These stations are staffed by volunteers who claim to provide services to Chinese nationals living abroad, such as renewing their driver's licenses or passports. However, they are part of the CCP's overseas repression operations, aimed at locating, intimidating, and silencing dissidents, activists, and critics of the regime. The FBI recently arrested two men who were running a secret Chinese police station in Manhattan, accusing them of conspiring to act as agents of the CCP and obstructing the investigation. The FBI also warned that these stations may threaten U.S. national security, sovereignty, and law enforcement, as they violate the principle of non-intervention and circumvent the standard judicial and diplomatic processes. They also undermine the credibility and legitimacy of the U.S. government and its institutions, creating divisions and conflicts among Americans.

The CCP police stations are part of the CCP's broader strategy of hybrid warfare, which involves using various means of coercion, pressure, and destabilization against the U.S. and its allies, such as cyberattacks, espionage, disinformation, and weaponized migration. These tactics are designed to exploit the vulnerabilities and weaknesses of the U.S. and its allies and to erode their trust and confidence in their systems and values.

These trends indicate that the CCP leadership is waging unrestricted warfare against the U.S., using various methods to undermine its national security, sovereignty, and values. The U.S. government and the public should be aware of the dangers posed by the CCP and take appropriate measures to counter its malign influence and protect its interests and allies.

Texas Legislation

Texas has spent over $11 billion throughout two legislative sessions to address the crisis and chaos caused by the Biden administration's handling of the border situation. To combat the issue, Governor Abbott recently signed several bills to strengthen border security measures and support local law enforcement agencies.

The first bill, SB 1900, designates Mexican cartels as Foreign Terrorist Organizations (FTOs) under state law, building upon an executive order issued by the governor last September. This designation allows for higher penalties for crimes related to drug trafficking and stash house operations and enables FTOs to be added to law enforcement intelligence databases. Additionally, local entities can now seek public nuisance claims against FTOs in their communities.

Next, Governor Abbott signed SB 1484, which authorizes the Texas Department of Public Safety (DPS) to train local law enforcement officials on cartel-related activity and effective tactics for combating border crimes. The bill also requires DPS to identify ways local law enforcement can

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assist in securing the border. It expands collaborative efforts through Operation Lone Star, Texas' border security mission.

SB 423 was also signed into law, clearly authorizing the Texas Military Department to use drones for border security. Furthermore, SB 1403 allows the governor to develop and execute an interstate compact for border security among interested states without requiring Congressional approval.

To provide relief for farmers and ranchers in border and rural counties, the Governor signed SB 1133, which creates a grant program to compensate property owners for damages caused by criminal activities on agricultural land. The law allows Texas ranchers to receive up to $75,000 in reimbursement per incident.

Lastly, SB 602 was signed into law, authorizing U.S. Border Patrol agents to arrest individuals for committing Texas crimes. This bill was a response to a request made by Border Patrol to the state of Texas, granting them additional tools to secure the border, including powers of arrest and search and seizure for felony offenses under Texas law when the incident occurs at a port of entry or Border Patrol checkpoint.

Conclusion

Distinguished members of this committee, I stand before you today to address the dire situation at our southern border and the urgent need for decisive action to protect our citizens and preserve our way of life.

The threats we face from Mexican cartels have reached unprecedented levels, extending far beyond the border and infiltrating every major city and town across Texas. These cartels, now recognized as foreign terrorist organizations, have forged alliances with global adversaries, including state actors like China, Russia, and Iran, and non-state entities such as Hezbollah, Hamas, MS-13, and Tren de Aragua. These threats' complex and evolving nature demands our unwavering attention and resolute action.

Regrettably, the federal government's deliberate inaction has not only exacerbated the border crisis. Still, it has actively weaponized mass migration and disinformation to erode the very foundations of our sovereignty and stability. This manufactured humanitarian catastrophe has overwhelmed our federal agencies, rendering them unable to fulfill their primary mandate of protecting the American people. Consequently, Texas has been left to fend for itself against an unrelenting invasion that threatens the fabric of our society.

Our brave Texas law enforcement officers, despite their valiant efforts, find themselves outgunned, outmaneuvered, and out funded by the ruthless Mexican Cartels that have exploited the chaos at our border. Encouraged by the federal government's abdication of responsibility, these cartels have transformed our border region into a lawless no-man's land where violence, trafficking, and despair reign supreme. Our men and women in uniform risk their lives daily to

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stem the tide of illegal immigration and protect our communities. Still, they cannot succeed without our government's full support and resources.

We, the proud people of the Republic of Texas, have the right and the sacred duty to defend our nation and the values that have made us great. We cannot stand idly by as our border crisis metastasizes into a national catastrophe that threatens to unravel the very bonds that unite us as Americans. We must act with courage and conviction before it is too late to save our beloved state and our cherished way of life.

To all mothers, fathers, and loved ones who have lost someone to these cartels, you are not forgotten. With steadfast commitment, I stand before you today, knowing there can be no appeasement or reasoning with this evil. This is a fight between good and evil, and we must marshal our collective will and direct the full force of our national power to confront these organizations. The time for half-measures and fragmented efforts has passed. Now is the moment for decisive and unwavering action to restore safety and security to our communities.

In closing, I implore this body to commit to the utmost priority of protecting our citizens. The future of our great nation depends on our focus against this common enemy. May history remember this day as an essential moment when our nation united in a resounding decree to end the Mexican cartels, protect American citizens, and secure a brighter future for generations to come.

Thank you for the opportunity to appear before you today, and I look forward to addressing your questions.

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Securing Our Border: Saving Our National Parks

Presented to:

House Committee on Natural Resources
(Subcommittee for Oversight and Investigations)

Presented by:

Lieutenant John Nores Jr. (ret.)
California Dept. of Fish and Wildlife
Marijuana Enforcement Team (MET)
Special Operations

Date: October 18, 2023

Location: House of Representatives
US Capitol – Washington DC

My name is John Nores, and I am a retired special operations game warden Lieutenant from the California Department of Fish and Wildlife (CDFW). It was an honor to be a game warden and serve 28 years protecting our nation's wildlife, waterway and wildland resources and stopping wildlife and environmental protection law violators was a privilege.

California game wardens are statewide police officers while also being Federally deputized to enforce Federal wildlife protection laws. I began my journey with the police training academy in 1992 and at that time I could never have anticipated that the end of my operational career two decades later would be spent leading a specialized unit of game wardens dedicated to combating Transnational Criminal Organizations (TCO's), aka "cartel" infiltration of our nation's pristine public and rural private lands to grow toxically tainted black-market cannabis for nationwide distribution.

This proved to be true as drug cartel operations within and outside of our nation's border have become some of the most egregious environmental and wildlife resource crimes and public safety threats we have seen throughout America. These crimes are occurring not only on our border, but throughout the rest of America with many of these crimes committed by non-citizens here illegally.

Through their use of US EPA banned chemical insecticides and rodenticides (carbofuran, Metaphos, Q-Furan, etc.) and massive amounts of water theft (especially alarming during recent peak drought years in the country) throughout tens of thousands of clandestine cannabis grow sites on both public and private land, cartel cells are poisoning waterways, killing numerous wildlife species, destroying wildland trees, vegetation and grass lands while posing a severe threat to our public's safety.

The public safety threats posed by these criminal cells are evident in cartel grow sites we have encountered with firearms, stabbing blades, and various anti-personal traps (i.e., Vietnam war era punji pits) as well as toxic poisons and other public safety threats common throughout these sites.

The cartel's propensity for violence, however, was first witnessed on a deadly cannabis grow arrest and eradication mission in the Silicon Valley

foothills we conducted with the Santa Clara County Sheriff's Office on August 5th, 2005.

While entering the grow site, our allied agency enforcement team was ambushed by cartel gunmen defending their multi-million dollar complex and a gunfight ensued. A near-fatal bullet from a grower's AK47 struck our young warden teammate, penetrating both of his legs before an agonizing three hour wait for his helicopter evacuation to the hospital.

That incident was the first time a law enforcement officer in America had been hit and nearly killed by a clandestine marijuana grower's bullet, and our first violent encounter with tactically savvy cartel operatives from Mexico running their operations in the US, in this case within the Silicon Valley.

We would have four more officer involved shooting incidents and numerous other violent encounters with cartel grower groups defending their black-market cannabis operations throughout California before I was tasked with co-developing and leading a special operations group of game wardens within our agency called the Marijuana Enforcement Team (MET).

Comprised of officers with extensive tactical experience, wilderness fieldcraft, (stalking, apprehension, and survival skills), amazing lifesaving apprehension and detection K9 partners, a sniper unit, national guard, and allied agency law enforcement helicopter teams, the MET's mission was clear:

- Apprehend and prosecute illegal and dangerous growers to protect our public.
- Eradicate their black market (in many cases poisonous and highly toxic) crop before reaching the national black market.
- Environmentally restore illegal outdoor trespass grow sites by removing water diversions, restoring waterways, removing grow site poisons, encampments, and other waste to reclamate the site back to its natural state on pristine public and private lands.

I led the MET until operational retirement in December of 2018 and between July 2013 and December 2018, our documented production levels paint an ominous picture during those first five years:

- **800** arrest, eradication, environmental reclamation missions.
- Destroyed **three million** toxically tainted cannabis plants.
- Destroyed **58,677 pounds (29 tons)** of toxically tainted processed cannabis for sale and distribution.
- Made **973 felony arrests** *(approximately 90% of those arrests made on cartel or cartel affiliated Mexican nationals operating in the US illegally)*.
- Seized and destroyed **601 firearms.**
- Removed **899,945 pounds (450 tons) of grow site waste** and other pollutants.
- Removed **2.35 million feet (455 miles) of irrigation pipe.**
- Removed **91,728 pounds (46 tons) of fertilizers.**
- Removed **756 gallons of illegal toxic chemicals.**
- Dismantled **793 water stealing dams** from these clandestine grow complexes with these dams (and many other illegal cannabis water diversions) *depleting billions of gallons of water during California's peak drought period.*

Having seen numerous cartel generated public safety, wildlife, and waterway destruction threats in my home state of CA for decades, it was not until February 2020 that I would witness these same threats on and near our remote southern border. While hosting and producing the pilot film for our Thin Green Line documentary series we were big game hunting on a remote 50,000-acre ranch near Candelaria, Texas. Our outfitters for that project were well aware of the cartel trafficking routes through this ranch, having had several violent encounters with trafficking groups moving drugs and people into the US through the property.

During filming, we witnessed and documented canyonland caves on the property being used for cartel trafficking way-stop camps, all littered with trash, human excrement, other waste, and graffiti delineating gang and/or cartel group affiliation. When contacted by a border patrol helicopter

shortly after this find we learned that approximately 20 cartel affiliated drug and human traffickers were being pursued by border agents on another area of the ranch. I was informed by the border patrol pilot that these trafficking operations through the ranch (and many other ranches along that area of the border) were happening weekly, and often more frequently.

While our MET unit's production figures between 2013-2018 and the trafficking activity we witnessed on the Texas/Mexico border are alarming, we must be cognizant of the disturbing reality this relates to today. These statistics were generated during a period when some form of border security measures was in place, and more were in the works in an effort to slow down TCO members from entering and committing crimes throughout the US. Now five years later and lacking any effective border security policy and the recent expiration of Title 42, our border has never been easier to cross with threats to our public's safety and wildland and water resources continuing to escalate.

I witnessed this first-hand in May of 2022 when being interviewed for and assisting on the production of Daily Caller's Narcofornia documentary film in northern California's Siskiyou County. One of the most remote and pristine counties on the west coast, Siskiyou County contains a handful of small towns comprised of families that have lived there for generations. Livestock ranching, agricultural farming, trade jobs and a love for community prevail throughout the region.

Shortly after California's new recreational cannabis regulations under Proposition 64 were passed in 2016 that demographic began to change. While Prop 64 was hailed as a law to eliminate the black market and drive the cartels out of the weed market, the new law has done just the opposite. With unregulated outdoor public and private land cannabis production now watered down from a felony to a misdemeanor (and bumped down from a misdemeanor to an infraction for juvenile offenders) under the new law, the cartels have faced little, if any, penalties for mass producing illegal cannabis for our nation's black market. This law structure is incentivizing illegal cannabis production for a lucrative nationwide black market while driving legitimate and environmentally regulated cannabis growers out of business.

This has led to massive increases of unregulated private land grow sites throughout California and other states now dominated by the Asian (Chinese and Hmong) crime groups. According to my colleagues at the Drug Enforcement Administration, and just like Mexican cartel operatives, many Chinese nationals are currently entering the US through the flooded open border to conduct crimes for their organization.

These illegal Chinese cannabis production operations are not only widespread throughout California but other states including Oklahoma, Oregon, and Maine, with diverted and stolen water used for their black-market plants. We are also seeing new Chinese poisons that are being smuggled across the border and may be even more toxic than the Carbofuran type insecticide poisons traditionally used by the Mexican cartels with widespread human trafficking and coerced labor of grow site workers (primarily Mexican and Chinese nationals) throughout these private land sites being the norm.

While raiding grow sites throughout Siskiyou County with the Sheriff's Department we learned of approximately 10,000 illegal, outdoor private land grow complexes that have taken over the rural county. These grow sites are depleting millions of gallons of above ground and under-ground water table resources daily and stealing city water supplies for their grow operations. We saw numerous well drilling rigs and illegal wells throughout these grow complexes along with tons of trash, waste, and other pollutants in and around pristine streambeds adjacent to these sites.

Very alarming were the thousands of gallons of unknown chemical poisons in 55-gallon drums at every grow complex and the Tyvek hazmat like suits and respirator mask systems within each site. The growers were using these suits when spraying or smudge pot burning these insecticide poisons onto their cannabis plants indicating the toxic, and potentially deadly, nature of this cannabis reaching our nationwide black market.

Many Siskiyou County farmers, ranchers and other community members have been threatened with violence by cartel growers to look the other way as their farm and ranch water supplies are now being depleted

and emptied by these criminal groups. Feeling over run and in danger, many long time Siskiyou County community members have moved out of the area. Other crimes we saw throughout these grow operations included human trafficking, animal cruelty, water pollution and streambed alteration to name a few.

These travesties are not isolated to this specific region. Cartel generated crimes are occurring far beyond our northern and southern borders in every state and impacting us all. While I have outlined the wild land, waterway and wildlife resource crimes engendered by these criminal groups and the associated dangers to our public's safety from my experiences, we must remember that these TCO's are poly-criminals whose organizations engage in other damaging crimes beyond toxically tainted black market cannabis production.

DEA officials point out that the Mexican cartels (Sinaloa and Jalisco New Generation) are now partnered with the Chinese cartels to the benefit of both organizations. Chinese crime groups supply the pre-cursor chemicals the Mexican cartels need to produce and distribute fentanyl and meth-amphetamine killing hundreds of thousands of Americans annually, while the Chinese have virtually taken over the black market cannabis trade using America as the middle man to launder billions of untraceable cash dollars (https://youtu.be/xMsLDv4M0VM?si=Bkk8lqHS5F4DEZsH).

In all cases our nation's people and our pristine wildland, waterway and wildlife resources are poisoned and destroyed in the process. Even more disturbing is the multi-billion-dollar human and child sex trafficking networks these TCO's are running not only throughout America but across the globe and growing rapidly.

With growing awareness of these embedded cartel crimes, I am witnessing more interest and outrage from fellow Americans like never before as evident from a 100 times wider distribution rate of the 2022 second edition release of my latest book, Hidden War compared to distribution levels of the first edition published in 2019. High reach public figures like Joe Rogan are alarmed and networking these issues in an effort

to make Americans aware of the criminal activities transpiring across our nation and their support and passion is inspiring.

Given everything we have seen while combating these criminal groups, stopping TCO's from operating within America to poison our citizens and to prey upon our children must be a top policy priority. With the doorway for these groups to begin operations throughout our nation is our border, that door must be closed and controlled carefully.



Cartel gunman in national forest grow complex



Carbofuran grow site poisoned Mountain Lion



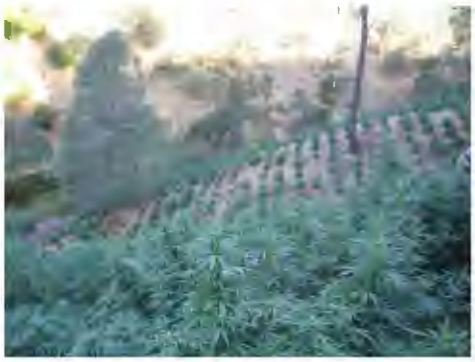
Cartel grower with poisoned golden eagle



Mexican cartel EPA banned grow site poisons



Vietnam era anti-personnel punji pit in National Park



Outdoor cartel grow site in state park



Mexican cartel grow – public river water stealing



Northern CA National Forest cartel grow site waste



Tyvek poison protection suit in
Chinese private land outdoor grow site



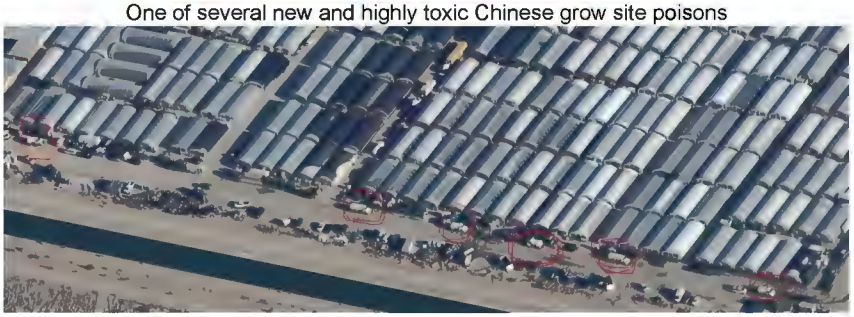
Mexican cartel gunmen in outdoor grow complex - CA



Cartel grow – EPA banned poison killed grey fox



One of several new and highly toxic Chinese grow site poisons



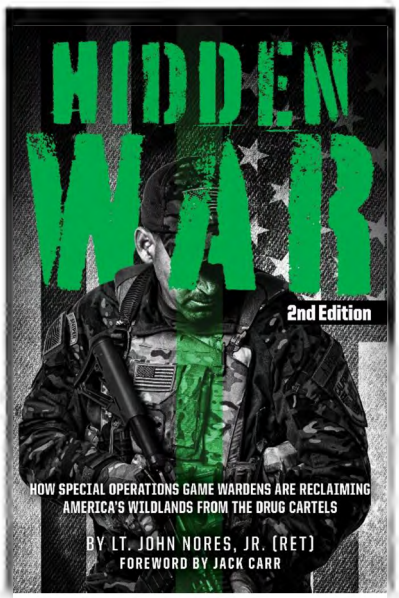
Massive cartel illegal private land cannabis complex – LA County
Note: Each red circle is a water truck pumping in stolen water with trucks running 24/7



Poisoned water and illegal well drilling operation on private land cartel grow site



Hidden War Edition 1 – Forward by Congressman Jared Huffman



Hidden War – Updated Edition 2 – Forward by Jack Carr

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DEA STREET

STATE AND TERRITORY REPORT ON ENDURING AND EMERGING THREATS

January 2024
NIP-012-24

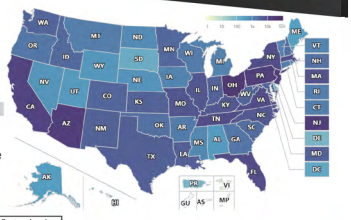
Enduring Threats

Fentanyl

- Fentanyl remains the primary driver behind the ongoing epidemic of overdose deaths in the United States. *The Centers for Disease Control and Prevention (CDC) reports 72,027 drug poisoning deaths from fentanyl in 2022. Moreover, the same provisional data shows synthetic opioids were involved in approximately 68 percent of drug poisoning deaths.*
- Incidents of fentanyl misuse and drug poisonings, and law enforcement seizures of fentanyl, have increased steadily since at least 2013 and reached record levels in 2022. DEA, along with state, local, and federal law enforcement partners, continues to seize record quantities of fentanyl each year.
- The Sinaloa Cartel and Jalisco New Generation Cartel (CJNG) continue to produce fentanyl in both powder form and pressed into fake pills.
- Fentanyl is increasingly being mixed with other illicit drugs, such as methamphetamine, heroin, and cocaine.

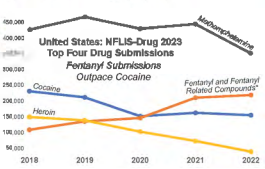
Methamphetamine

- Deaths from psychostimulants (primarily methamphetamine) have steadily increased for the past twelve years, and have sharply increased in the past five, which is likely due to widespread availability of highly pure and potent methamphetamine from Mexico.
- In 2022, the CDC reported 33,190 people died due to poisoning involving psychostimulants with abuse potential, an increase of 32 percent from 2021.



NFLIS 2022 Fentanyl and Related Compounds Top Ten	
State	Count
Ohio	27,213
New Jersey	19,999
Arizona	17,853
Pennsylvania	15,794
California	13,154
Florida	8,985
New York	8,780
Virginia	8,538
Tennessee	8,349
Massachusetts	7,461

As of December 7, 2023



*Fentanyl related compounds is an umbrella term to capture the analogues and chemicals related to fentanyl.
Source: DEA National Forensic Laboratory Information System (NFLIS-Drug)

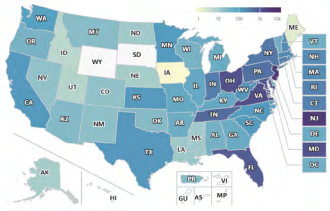
Emerging Threats

Xylazine

- Xylazine, a potent animal tranquilizer, has worsened the fentanyl threat by posing yet another health challenge.
- Xylazine is not an opioid, so naloxone/Narcan does not reverse its effects.
- Xylazine is not a controlled substance under the U.S. Controlled Substances Act (CSA).
- Xylazine is primarily added to fentanyl and other opioids to enhance the effects.
- Xylazine, also known as "tranq", is an analgesic and muscle relaxant for veterinary use.
- Xylazine has harmful physical effects in the respiratory and circulatory systems, as well as muscle and soft tissue injuries that can turn necrotic or result in amputations.
- Xylazine has been encountered in combination with fentanyl, but has also been detected in mixtures containing cocaine and heroin.
- DEA has seized xylazine and fentanyl mixtures in 48 of 50 States, Puerto Rico, and the District of Columbia.

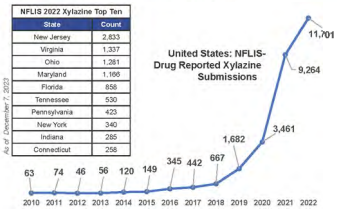
Nitazenes

- Nitazenes (2-benzylbenzimidazoles) are an emerging synthetic opioid group that can be more potent than fentanyl and poses an additional opioid threat to the United States.
- Similar to previously identified synthetic opioids, nitazenes have appeared on the illicit market with minor chemical modifications while retaining their pharmacological profile.
- Etonitazene, isotonitazene, clonitazene, and several additional nitazene analogues are Schedule I substances under the U.S. CSA.
- Nitazenes are increasingly being identified in combination with fentanyl, heroin, and cocaine in lab submissions.



NFLIS 2022 Xylazine Top Ten	
State	Count
New Jersey	2,833
Virginia	1,337
Ohio	1,281
Maryland	1,166
Florida	856
Tennessee	530
Pennsylvania	423
New York	340
Indiana	285
Connecticut	258

As of December 7, 2023



Source: DEA National Forensic Laboratory Information System (NFLIS-Drug)

U.S. Department of Justice
Drug Enforcement Administration

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STATE AND TERRITORY REPORT ON ENDURING AND EMERGING THREATS

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National Forensic Laboratory Information System-Drug Top-Five Drug Submissions 2023* by IACP Region

Mountain Pacific Region	North Atlantic Region	North Central Region	Southern Region
1. Methamphetamine	1. Cocaine	1. Methamphetamine	1. Methamphetamine
2. Fentanyl	2. Fentanyl	2. Cocaine	2. Cocaine
3. Cocaine	3. Methamphetamine	3. Fentanyl	3. Fentanyl
4. Heroin	4. Xylazine	4. Heroin	4. Heroin
5. Alprazolam	5. Heroin	5. Xylazine	5. Alprazolam

Source: DEA NFLIS-Drug, October 30, 2023

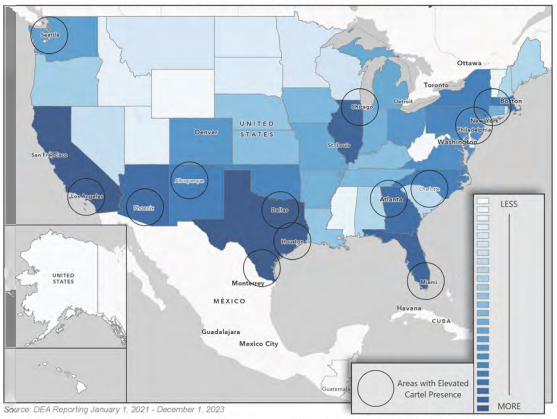
International Association of Chiefs of Police (IACP) Regions

Mountain Pacific Region: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming
North Atlantic Region: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia
North Central Region: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin
Southern Region: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Puerto Rico

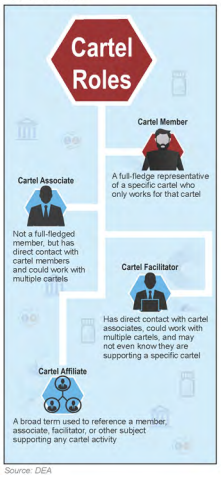
The National Forensic Laboratory Information System (NFLIS)

Established in 1997, the NFLIS is a program of the DEA Diversion Control Division. The DEA's NFLIS-Drug data collection systematically collects drug identification results and associated information from drug cases submitted to and analyzed by participating Federal, State, and Local forensic laboratories with drug chemistry sections. In 2018, DEA expanded the NFLIS program to include two additional continuous drug surveillance components that collect drug-related mortality data from medical examiner and coroner offices (NFLIS-MEC) and drug testing results from toxicology laboratories (NFLIS-Tox) to supplement and complement the current NFLIS-Drug data from drug cases submitted to and analyzed by the Nation's forensic laboratories.

Presence of Jalisco Cartel and Sinaloa Cartel Affiliates in the United States



Source: DEA Reporting January 1, 2021 - December 1, 2023



Source: DEA

- Sinaloa Cartel and Jalisco Cartel affiliates identified in all 50 states in the U.S.
- Sinaloa Cartel hotspots: Southern California, Arizona, New Mexico, New York, New England
- Jalisco Cartel hotspots: Texas, Georgia, Southern California, North Carolina, Illinois
- Outside of hubs near the Southwest Border of the United States, cartel-affiliated activities trend higher in large population centers east of the Mississippi River

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NIIP-002-23
October 2022





DRONES AND PORT SECURITY
AT THE PORT OF BROWNSVILLE

Institute for Homeland Security

Sam Houston State University

John P. Sullivan

George W. Davis

Tom Adams

Technical Paper: Drones and Port Security at the Port of Brownsville

John P. Sullivan, George W. Davis, and Tom Adams

Keywords: Counter-Unmanned/Uncrewed Aerial Systems (C-UAS), Counter-Swarm, Critical Infrastructure Protection, Drones, Port Security, Unmanned/Uncrewed Ground Vehicles (UGVs), Unmanned/Uncrewed Maritime Vessels (UMVs), Unmanned/Uncrewed Aerial Systems (UAS), Swarms/Swarming

Abstract:

This technical paper recounts a geospatial drone security assessment for the Port of Brownsville, Texas (Brownsville Navigation District). The Port of Brownsville is a major intermodal transportation center and is expanding into a major venue for industrial development. The Port of Brownsville is the only deep-water port directly on the US-Mexico Border. The drone assessment will evaluate the threats posed by aerial drones/unmanned or uncrewed aerial systems (UAS) to the port; assess the potential effects of drones on port operations and port security; suggest potential counter measures (counter-UAS); provide an introduction to emerging drone threats, including unmanned/uncrewed vessels and ground vehicles; and drone swarms (or swarming attacks). The impact of various drone threats with port operations is discussed. Mechanisms for enhancing indications and warning, detection, and response to drone threats on the Port of Brownsville, and potential vehicles for sharing these threat data with other ports, port security personnel, law enforcement, and emergency responders will be discussed.

Introduction

This technical paper provides a drone threat assessment for the Port of Brownsville. The assessment looks at all drone modalities (aerial, ground, and maritime) with special emphasis on aerial drones or unmanned/uncrewed aerial systems (UAS). Figure 1 depicts an aerial drone above the port. The port imports and exports a range of cargoes, including steel slab, hot and cold rolled, steel plate, steel beams (billets), iron ore, pig iron, aluminum T-bars and ingots, grains, sugar, salt, minerals, wax, windmill components, cement, aggregate; and hydrocarbons, including gasoline, diesel, natural gas and several grades of lube oil; as well as containerized cargo. The Port of Brownsville is one of 17 ports in Texas. The Port of Brownsville (UN/Locode: USBRO) is located circa 25° 57′ 0″ N, 97° 24′ 0″ W in Cameron County, Texas. The port is at the southern terminus of the 17 mile-long Gulf Intracoastal Waterway near the mouth of the Rio Grande; it is 8 miles (13km) north of the Mexican border. The port is served by the deep-water Brownsville Ship Channel which accesses the Gulf of Mexico, passing between several barrier islands (North and South Padre Island, and Brazos Island). The Port is governed by the Brownsville Navigation District. The Post of Brownville covers 40,000 acres of land and is served by its own Port of Brownsville Police and Security Department. The United States Coast Guard maintains a Marine Safety Detachment co-located with the Port of Brownsville Police. The port is a Foreign Trade Zone (FTZ No. 62), contributing $ 3 Billion to the Texas economy.



Figure 1. 3D Depiction of Aerial Drone Models at Altitude Above the Port of Brownsville (Authors' Analysis rendered using Geoweb 3d Software)

Situation/Methodology

The Port of Brownsville (POB) is currently operational and has the potential to expand and become a significant regional port on the Gulf of Mexico. Like all ports, it faces a range of threats and risks. Addressing and anticipating these risks is essential to sustaining current operations and anticipating future threats. Drones, specifically UAS have been identified as a potential threat to operations.[1]

In order to assess the scope of current and future drone threat—including the range of drones: UAS, as well as ground and maritime variants to the Port of Brownsville, the threat assessment team conducted a literature review of drone threats. This review built upon review of previous technical papers produced for the Institute of Homeland Security at Sam Houston State University, academic and professional papers on these issues, including contemporary threats faced in Mexico, where criminal armed groups (CAGs) are weaponizing aerial drones, and in Ukraine.

The literature review was augmented by open source, geospatial assessment of the port's terrain features and assessment of drone sensor data available for the port and environs. Figure 2 depicts aerial drones above the port. This baseline data was augmented by video teleconference discussions with the POB Police Executive and Command Staff (chief, lieutenant, and sergeant), a two-day site visit to the port which included three focus group sessions: 1) Port of Brownsville Personnel; 2) Port of Brownsville Tenants; 3) Public Safety Partners; a guided tour of the port; and a private discussion with Chief Dietrich and his command staff. The focus group sessions were augmented with follow on discussions and a survey.

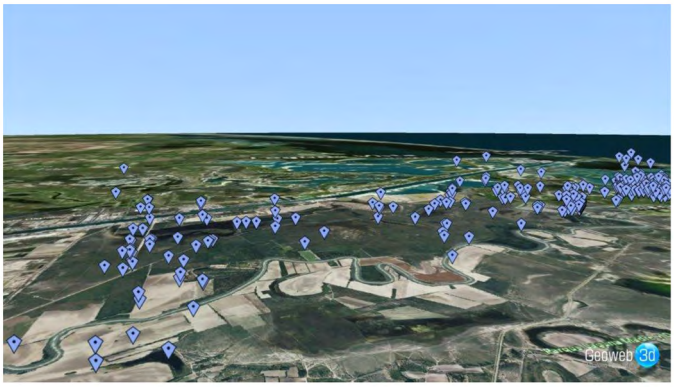


Figure 2. 3D drone data represented as icons clicking on an icon opens the attribute data of the drone. (Authors' Analysis rendered using Geoweb 3d Software)

Overview of Drone Threats (UAS and Emerging Threats)

Drones are both an emerging threat and opportunity. Drones range in size from small consumer vehicles to larger payload specialty vehicles. Drones can be used in the air, on the ground, and on and under the water. This section of the report summarizes the threats that drones of all three general categories can present to a port. Similar threats are faced at other venues and critical infrastructures.[2]

All drone activity can be characterized in one of three ways: 1) it can be an *Irritant*; 2) it can be *Malevolent*, 3) or it can be *Beneficial*. This applies to all three major classes of drone: aerial, waterborne or maritime, and surface or ground. Irritants include unlicensed an unauthorized use, such as hobbyists flying to observe an area out of curiosity, but not observing flight and access restrictions. Malevolent use includes drones used to smuggle illicit goods, surveil an area (this is known as intelligence, surveillance, and reconnaissance or ISR in military settings), or conduct an attack. Drones used for ISR can be casing an area for future attacks (this will be discussed in Section 4: Operational and Legal Issues). Beneficial drone use includes using drones for facility inspections and site security.

Drone Threat Potentials on the Rise

The use of drones—especially aerial drones—has gained increasing notice an interest in recent years. Drones have become a feature of military operations. Drones are also increasingly important in criminal and potential terrorist operations. In Ukraine, battlefield drones have become ubiquitous.[3] Indeed, Ukraine epitomizes the now and future threat posed by the weaponization of commercial drones.[4] Drone threats in Ukraine include a range of aerial drones. This range includes large payload military drones, as well as commercial-off-the-shelf (COTS) and custom-built drones using repurposed military ordnance and homemade

explosives (HME) to accurately target equipment and personnel. The smaller aerial drones are known as small UAS (sUAS) and are able to deploy explosive payloads up to 1.3 kilograms (2.86 pounds),[5] surface or ground vehicles (UGVs),[6] and maritime drones or uncrewed maritime vessels (UMVs); both surface vessels, also known as Uncrewed Surface Vessels (USVs) and subsurface vessels, also known as uncrewed underwater vessels (UUVs). One way attack (OWA) drones that can act as suicide or kamikaze drones, crashing into or detonating above a target, may become another mode of UAS attacks, potentially bringing larger payloads to bear from a greater distance and at a reasonable cost.[7] Finally, the potential for drone swarms is evolving in Ukraine.[8]

Closer to home, criminal drone threats are also evolving. Mexican cartels have weaponized commercial off-the-self drones to conduct attacks against rival cartels and gangs and both police and the military.[9] Mexican cartel drone use is an example of clandestine drone proliferation.[10] The use of aerial drones on the US-Mexico border is a persistent concern.[11] Terrorist use of drones is also an emerging concern.[12] According to Interpol:

> Recent examples include terrorist groups using drones in surveillance activities and delivering chemical, biological, radiological, nuclear and explosive materials in conflict zones, and an environmental group which repurposed a hobby drone to enter the secure airspace of a nuclear site and crash into a building highlighted the current reality of the threat posed by the illicit use of drones.[13]

Drones, specifically sUAS, have also been used to threaten public officials in Mexico[14] and Venezuelan President Nicolás Maduro was subject of a two drone assassination attempt in Caracas in August 2018.[15] These potentials have not yet been fully realized in the United States, but the potential is real.[16] As Dr. Robert J. Bunker has noted:

> A single weaponized drone could engage in ISR and locate a target, engage that target with an IED, and also capture the attack on video.[17]

Potential consequences from sUAS attacks are feasible and their effects may be grave. A recent study of nefarious sUAS use conducted by the Homeland Security Operational Analysis Center, a federally funded research and development center (FFRDC) operated by the RAND Corporation for the US Department of Homeland Security identified four high-risk use cases of nefarious sUAS:

- unauthorized reconnaissance or surveillance
- conveying illicit material [smuggling]
- conducting a kamikaze explosive (i.e., kinetic) attack
- conducting a chemical, biological, or radiological [CBR] attack.[18]

Threats and Opportunities for Ports and Maritime Security

Explosive laden aerial drones have targeted commercial tankers in the Gulf of Oman on both 15 and 18 November 2022.[19] In the five years ending in 2022, 73% of 23 recorded drone attacks on oil and gas targets in the Middle East have been successful.[20] In September 2019, for example, two oil processing facilities in Saudi Arabia were attacked by drones.[21] Another

exemplary oil and gas attack on a port occurred in Yemen at the Al-Mukalla port in October 2022 as an oil tanker was offloading fuel (that is a significant tactic, technique and procedure – TTP for our purposes).[22] Maritime terrorism and attacks on port potential undermine national security and protecting ports is a key critical infrastructure protection need since interruptions of port operations can undermine global logistics and supply chains.[23]

The United States Coast Guard (USCG) has developed a new "Unmanned Systems Strategic Plan" that establishes the future framework for using aerial and waterborne drones for protecting US maritime borders.[24] The USCG envisions using drones of all types, including UAS—and other unmanned systems or UxS—as an enabling capability within its force structure for all Coast Guard mission areas."

> UxS will provide persistent maritime domain awareness; optimize surveillance in order to predict, detect, deter, counter, and mitigate threats to the homeland and the maritime environment; and reduce the dull, dirty, dangerous, and distant demands on personnel, optimizing the employment of limited Coast Guard resources.[25]

The UxS missions for the Coast Guard includes using aerial drones, USVs, and UUVs, both autonomous and semi-autonomous to counter both military threats and threats posed by transnational criminal organizations (TCOs).[26] Indeed, criminal cartels have been adapting semi-autonomous uncrewed semi-submersible vessels (known as narco-submarines) for transporting narcotics across the sea.[27]

As previously mentioned, drones can include aerial systems, such as sUAS, on the ground, including UGVs, and on the water on the surface or underwater, UMVs. It should be noted that these types of drones are based upon the prevailing technology and the distinctions may be blurred in the future (and already are being blurred) as amphibious drones able to operate in multiple settings emerge. One example of this emerging technology is the aerial-submersible combination drone that can fly and swim underwater.[28]

Amphibious drones also highlight another emerging drone threat potential: *Drone Swarms*.[29] Drone swarms involve multiple drones working to achieve a specific goal, such as targeting critical infrastructure like a port or oil refinery or a military or civilian target. Drone swarms can involve a single type of drone massing its effects on a specific target or a range of drones of different types and functions to achieve a collective objective. The first scenario involves "homogeneous" swarms: the second "heterogeneous" swarms. The heterogeneous swarms could involve a mix of aerial, land, and waterborne drones or a mix of weaponized, surveillance, and command and control drones. Smaller swarms can be controlled by human operators using off the shelf devices; larger swarms would require multiple human operators or assistance from artificial intelligence (AI) and are therefore a future threat consideration.[30] Aerial drones—sUAS—are currently the main threat with the greatest disruptive potential.

Responding to Aerial Drones (UAS)

Unmanned or uncrewed aerial systems present a range of concerns and threats in the port environment. At the top of the operational set of issues is determining the nature of the drone

entering the port's airspace. This threat assessment is at the core of counter-drone (C-UAS) response. Are the drones entering the port's airspace an actual threat, a nuisance, or conducting an authorized commercial activity? If a threat what type of threat is involved and what immediate actions are viable to protect the port? As previously mentioned, many sUAS entering the port are irritants or nuisances. They however, congest the airspace, can cause unintentional harm, and can obscure the presence of actual malevolent threats. The volume of UAS incursions is likely to increase as UAS platforms become more common. Developing a C-UAS awareness and sensing capability is therefore an important strategic need. Discerning threats is based upon awareness, recognition, and discrimination.

First, what are the drone's characteristics: size, speed, payload? Is it equipped with specialized capabilities such as cameras, sensors, or weaponized payloads (explosive, chemical/biological or radiological dissemination)? Is there a known operator, can you use technical (sensors, cameras) or human means (patrol cars) to locate the operator? Is the UAS first-person view (FPV) and in line of sight or is it operating across a distance and over the horizon? Is it a single UAS or is it multiple UAS, operating as a swarm? Second, how will a malevolent drone or unintentional drone accident affect the port? Will it diminish perceptions of port security or affect port operations? Will it result in loss of revenue and decreased on time performance. Will it increase liability and insurance coverage? Will it cause injury, death or serious damage to property? Will it disrupt supply chains, etc.?

Addressing these issues relies upon awareness of UAS (and also other drone types such as UGVs and UMVs, surface and subsurface. Awareness requires familiarization and a range of training for different personnel based upon their role (operations personnel, security and law enforcement responders, and fire/rescue/emergency medical service responders. This familiarization and awareness need to be implemented through policies and procedures (*i.e.*, standard operating procedures–SOPs and emergency operations procedures–EOPs) with defined role-based TTPs. Intelligence and threat assessment enable these factors to come together for effective incident response and mitigation.

Response and mitigation can be enhanced through inter-agency cooperation and coordination, sharing threat and incident response information, and ensuring effective governance. Effective governance incorporates operationally effective detection capability and articulates clear response roles with established authorities for action. All of these factors must be defined and practiced through exercises and immediate action drills (IADs). These response measures require the establishment of policy and can be augmented by developing specific ordinances for authorized drone use in the port area.

Drones (UAS and other types) can also be used as tools for protecting the port and ensuring effective operations. Drones can be used for inspecting facilities, monitoring hazardous operations (such as various phases of ship operations), responding to and interrogating drone incursions by bringing sensors and visual means (cameras) to assess the incursion or suspect drone(s). Sensors, as discussed in other sections of this report, bring capabilities for protecting the port. These range from threat recognition through response. Various types of sensors can be integrated to detect different components of an overall threat. For example a drone sensor can potentially detect UAS or other drones, multiple detectors can enhance the likelihood of

detection. Drone detectors can be augmented with other tools, including visual sensors, such as video and CCTV, and automated license plate readers (APRs) to monitor approaches to the port where vehicles may be used by the operators of suspect drones. These different sensor types can be located at key approach and perimeter locations and checkpoints in order to triangulate sensor data toward identifying drone operators.

The essential components of a successful counter drone (including C-UAS) capability include defining a counter-drone strategy (including C-UAS), awareness and training, policies and procedures, intelligence and threat assessment for all phases of response (pre-incident, trans-incident, and post-incident. Once a drone is detected (the trans-incident phase), an incident response is required; this includes threat assessment and development of response and mitigation courses of action (COAs). Post-incident actions include incident investigation and attribution, intelligence assessment, information-sharing (within the port and among other ports, local law enforcement agencies, and intelligence fusion centers) to determine baseline threat awareness and identify potential threats or campaigns involving multiple venues. All of these should be followed by and documented in a comprehensive after action review (AAR).

Drones for Incident Response (Drones for Good)

Like all technologies, drones can be used for beneficial purposes, that is they can become "drones for good." The POB Police could potentially use sUAS as part of both a C-UAS program and part of a regular surveillance and incident response capability. Drones used in this fashion could become a force multiplier and extend the Port Police reach and enhance their effectiveness. Of course, this would require additional dedicated resources and personnel. In the interim, the POB Police could potentially build a part-time program and partner with adjacent agencies to start building this capacity. The City of Brownsville Police Department currently operates an "Unmanned Aircraft System (UAS) Program" with FAA-licensed remote pilots.[31]

Site Survey and Port-Specific UAS Issues

This section provides an overview of the terrain and physical infrastructure of the Port of Brownsville and its various components with special attention to UAS threats. The section also provides a discussion of key vulnerabilities for aerial ground, and maritime drone threats.

As this report, and especially the following analysis demonstrates, drones—especially sUAS—need to be recognized as a concern to the Port of Brownsville. This concern is also shared with the wider area as drones are a concern all along the US-Mexico frontier and the border zone in the Rio Grande Valley (RGV). According to the Border patrol Chief for the RGV sector:

> Right now, in the Rio Grande Valley, as beautiful as it is, we have a lot of encounters with drones, you know, coming from across the Mexican side of the border into the United States. And my concern as a chief is mostly for my agents on the border patrolling because they're doing counter surveillance on us, right? And when there's a drone doing counter surveillance on us, especially on the personnel on the ground, and the soldiers, because right now I have about 250 Department of Defense soldiers

> helping us do the mission on the border, they're doing counter surveillance on our operations and where we deploy our border patrol agents...
>
> And fortunately, DoD allowed us... we borrowed some technology for counter drone technology to help us. We only have one unit that we're testing right now. And it's been so successful that we've been able to acquire drones that have come across because we take them over and we bring them down, and we're able to exploit the intelligence out of that, and we're able to find out where it originated from. So we're working very closely with Mexico to be able to make those arrests and be able to prosecute those individuals...
>
> But, we need more of that. We really do. Because as more technology advances, more of the criminal organizations are also purchasing that technology...
>
> But, unfortunately, [there have been] over 24,000 detections of drones in RGV since we started tracking it last year. So that's a lot and it's very conservative. So technology for counter drone technology is what the Border Patrol needs right now in the Rio Grande Valley.[32]

The drone detection sensors described by the Chief of the Border Patrol RGV Sector were used as a foundation of this drone threat assessment. Specific locations of these sensors involved and their specific area of interest surveilled are excluded from this report for operational security reasons. Despite these caveats, there was significant sUAS activity described in relation to the area encompassing the Port of Brownsville. These are discussed in the following sections of the report, but first we will turn to a geospatial assessment of the port terrain using geographic information systems (GIS) or geospatial intelligence (GeoINT) analysis. We will then provide an assessment of the drone sensor data captured toward our overall drone threat assessment and then focus on the aerial environment characteristics underlying that assessment.

Drone Threat Perception Survey

The threat assessment project team administered a "***Stakeholder Survey on Perceptions of Drone Threats to the Port Of Brownsville (POB)*** (See Appendices Three and Four). The survey was disseminated to a total of 31 people and yielded six (6) responses; a 19.35% response rate. The survey was initially offered in print format (which yielded three (3) responses and was then offered in an online format yielding an additional three (3) responses. Three of the respondents were port officials; one was a port tenant; and two were public safety partners. All respondents and their responses were anonymous. The threats were rated on a scale of 1 to 10 with 1 the lowest threat and 10 the highest. Responses in the range of 1 to 3 are considered low threat; responses in the range of 4 to 6 (with 5 being the mid-range) are considered moderate threat; responses from 7 to 10 are considered high threat.

Perceived Threat Level:

- **Uncrewed Aerial Drones (UAS).** The average threat rating for Uncrewed Aerial Drones (UAS) was 7.0 High
- **Uncrewed Ground Vehicles (UGVs).** The average threat rating for Uncrewed Ground Vehicles (UGVs) was 3.67 Low .
- **Uncrewed Maritime Vehicles–Surface (UMVs-Surface).** The average rating for Uncrewed Maritime Vehicles–Surface (UMVs-Surface) was 6.7 Moderate.
- **Uncrewed Maritime Vehicles–Subsurface (UMVs–Subsurface).** The average rating for Uncrewed Maritime Vehicles–Surface (UMVs-Surface) was 6.0 Moderate.

Organizational Plans:

When asked about plans for drone threat awareness and drone threat recognition half the respondents reported the existence of awareness and recognition plans; while half stated the absence of such plans. All respondents reported the existence of drone threat assessment plans. Three respondents stated their organization had operational plans for drone threat response, two stated they did not have such plans, while one respondent did not answer. All six respondents stated that they had plans for drone threat training.

Threat Information Sharing:

All respondents expressed an interest in participating in a threat information-sharing effort at the Port of Brownsville and with other Texas Ports. Similarly, all respondents were interested in participating in threat information efforts with US Gulf Ports. Five of six respondents were interested in national (US) threat information-sharing efforts; while four respondents were interested in international threat information-sharing efforts.

Law Enforcement–Corporate Security Collaboration:

All six respondents stated that they would welcome law enforcement–corporate security collaboration on drone threats.

Drone Response:

The average response for interest in drone detection was 7.83 High. The average response for using drones for counter-threat interrogation was 6.33 Moderate. The respondents were enthusiastic on using drone as a response tool for their own operations (drones for good) with an average response of 8.0 High.
Threat Modeling:

All respondents were interested in threats modeling for various drone threats.

Significance of Drone Threats:

The average rating of the importance of drone threats to port (POB) operations and security was 7.67 High.

Organization/Agency Specific Concerns:

There were four specific responses. One respondent had concerns about regulatory limits placed on UAS response. One respondent indicated a desire for integrating AIS (Automated Identification System) like that used by vessels for aerial UAS. A third respondent emphasized: "Educating stakeholders about identifying and mitigating drone threats." The final comment provided is worth recounting in full:

> The above questions were answered with respect to "capability" vs current known threat of drones. Effort to secure classified information is compromised by the current drone activity over the port, yet no response capability is authorized for local PD or facility to respond. Problem goes all the way to DoD and agency default to "no action is approved" for either kinetic or non-kinetic means of securing the airspace above Critical Infrastructure, or non-critical infrastructure with national security implications. Without approved US policy and resultant TTP then the US will continue to leave their CI [counterintelligence] and national security at risk. After 8 years watching the counter-drone discussion it appears no agency is willing to act until a significant event/incident/catastrophe occurs at the national level. Concern is "when will the critical incident occur?"

It is with this background that we turn to our geospatial and drone sensor analysis.

Geospatial and Drone Sensor Analysis

The threat assessment project team conducted a detailed terrain analysis of the Port of Brownsville. This assessment looked at the POB's physical terrain features and also assessed its vulnerability for UAS incursion. The project team found geospatial data as an important tool for understanding and visualizing risk for both this assessment and potential future application for managing UAS threats. Figure 3 and 4 following provide an illustration of that functionality with the port tenants' parcel boundaries depicted in Figure 3 and the underlying data attributed rendered in Figure 4. This data can be useful in alerting tenants of incursions and during threat assessment and incident response.



Figure 3. Authors' GIS Elaboration of POB Tenant Parcels. (Derived from POB Parcel Data)

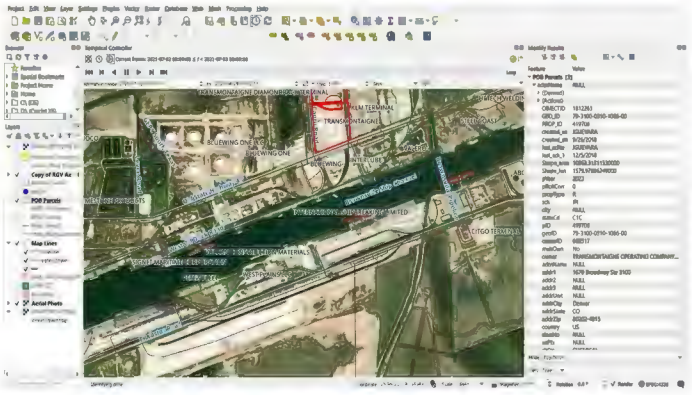


Figure 4. This Image Depicts GIS Functionality for Threat Assessment and Incident Response. (Authors' Elaboration; Derived from POB Parcel Data):

After creating a baseline terrain assessment, the project team conducted an assessment of aerial drone (UAS) incursions in the vicinity of the POB. The following images (Figures 5 and 6) summarize these findings with Figure 5 depicting the location of all aerial drones detected from July 2021 through April 2023. A total of 7,477 UAS were detected.[33] 5 depicts the locations of the drones detected.

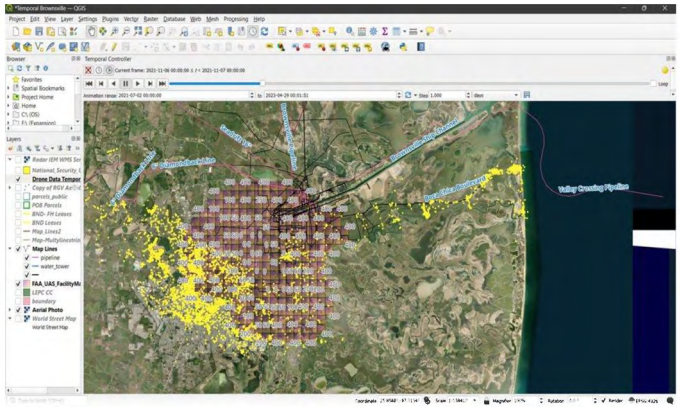


Figure 5. This image shows GIS functionality related to the location of all 7,477 drones detected from 7/21– 4/23. The gridded area in the center shows ceiling height restrictions in vicinity of the Brownsville/South Padre Island International Airport (BRO) airport. (Authors' Elaboration of Aerial Armor, a Dedrone Company Data)

The timeframe for this UAS assessment looks at sensor data from July 2021 through April 2023; it also focuses on an eight (8) mile radius of Brownville. Figure 6 is a Drone Detection Heat Map showing the intensity of drone traffic in that 8-mile radius. Figures 7 and 8 provide detail of the flight paths in the vicinity of the POB along the ship channel and south toward the Rio Grande (Rio Bravo) and US-Mexico border.

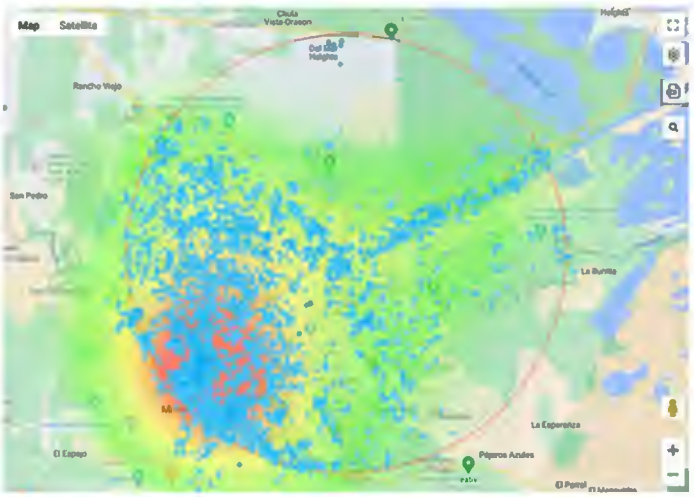


Figure 6. Drone (UAS) Detection Heat Map (Courtesy Aerial Armor, a Dedrone Company)



Figure 7. Drone Flight Paths Depicted with Red Lines in Vicinity of the POB (Courtesy Aerial Armor, a Dedrone Company)

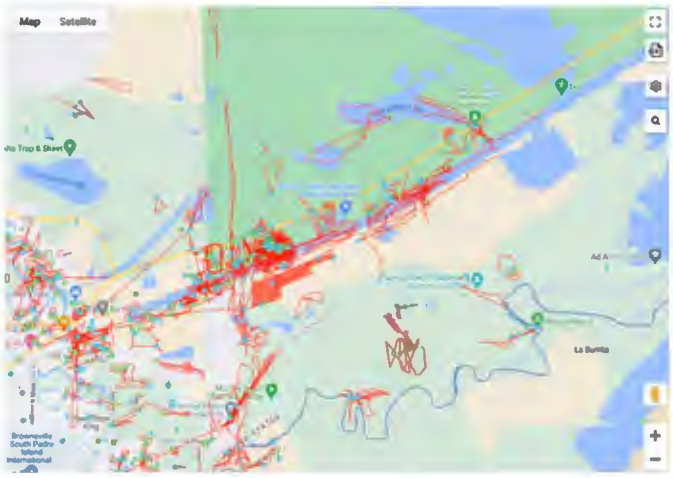


Figure 8. Drone Flight Paths Depicted with Red Lines in Vicinity of the POB (Courtesy Aerial Armor, a Dedrone Company)

A total of 7,948 flights were detected within the area of interest depicted in Figure 6 (an 8-mile radius from the POB). These are attributed to 1,326 unique drones (with a maximum altitude of 6,718 feet. Of the flights detected, 2,259 were found above 400 feet, These flights involved 406 unique drones. Night flights accounted for 1,771 of the drones detected (this data set is slightly larger than that depicted in Figure 5).[34] Figure 9 details the drone activity detected during the 450 days from 1 June 2022 to 11 July 2023. The majority of drone flights were in the 200–400 foot range; followed by drones in the 0–200 foot range; and then the third most common range at 400–600 Feet. Table 1 describes the types of drones and number of flights by each drone type detected during the same 450 days.

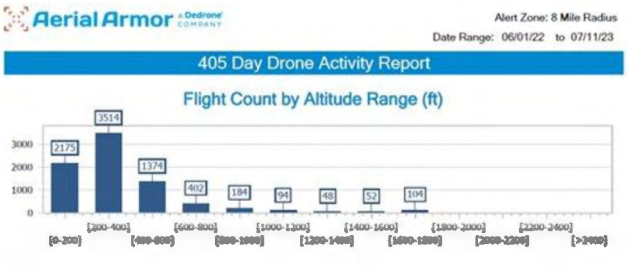


Figure 9. Flight Range by 200 Foot Increments (Courtesy Aerial Armor, a Dedrone Company)

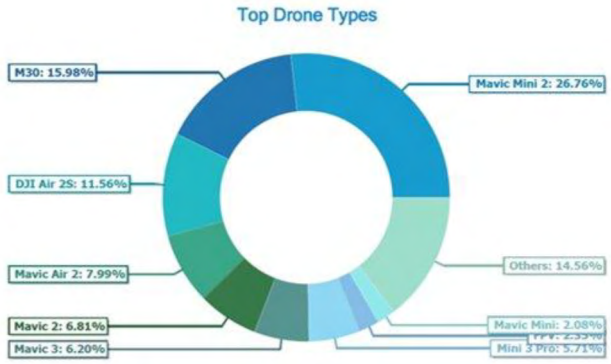


Figure 10. Most Common Drone Types Detected (Courtesy Aerial Armor, a Dedrone Company)

Drone Type	Flight Count
Mavic Mini 2	2,127
M30	1,270
DJI Air 2S	919
Mavic Air 2	635
Mavic 2	541
Mavic 3	493
Mini 3 Pro	454
FPV	187
Mavic Mini	165
Mavic Pro	143
Mini SE	134
Mini 3	80
Unknown	80
Mavic Mini 3 Pro	75
Mavic 2 Enterprise	73
M300	67
M2EA	66
Phantom Pro V2.0	65
Mavic 3C	62
Inspire 2	58
Mavic 3E/3T/3M	44
Phantom 3 Std	22
Mavic 3E/3T	21
Mavic Air	21
Phantom 4 Pro	19
Avata	16
Mini 2 SE	16
Spark	14
P3SE	14
Mavic 3 Pro	12
Phantom 4	12
NewDrone_88	10
NewDrone_87	7
Phantom 4 RTK	7
M200 V2	4
Phantom 4 Adv	3
NewDrone_84	3
NewDrone_73	3
Phantom 3 Series P	2
M600 Pro	1
NewDrone_67	1
M200	1
NewDrone_86	1

Table 1. Drones Type and Corresponding Flight Count (Courtesy Aerial Armor, a Dedrone Company)



Figure 11. Drone Flight Counts by Week and Month (Courtesy Aerial Armor, a Dedrone Company)

Figure 10 describes the most common drones UAS)detected and Figure 11 displays the drone counts by week and month. The drones detected were all COTS UAS produced by DJI (SZ DJI Technology Company, located in Shenzhen, Guangdong, China.) DJI quad-copter drones are the most common commercial sUAS platform. DJI drones come in a variety of models with variable payloads and specialty applications ranging from camera drones that are ideal for ISR operations to agricultural drones used for crop dusting (that can be weaponized to disseminate chemical or biological agents).[35]

While the entire POB is at potential risk from UAS activity, the liquid cargo docks handling petroleum products are at risk due to the volatile and hazardous nature of the products distributed. Tenants handing petroleum and hydrocarbon products deserve special attention. Figure 12 illustrates this risk by displaying UAS flight paths above port petroleum terminals and storage tanks. Another area of concern is the USS Kitty Hawk (CV-63) aircraft carrier being dismantled by International Shipbreaking Limited, LLC. Figure 13 shows drone flight paths above CV-63. Figures 14 and 15 provide 3D models of drones taking photos of the CV-63. While these incursions are most likely hobbyists or irritants, they could also have been commercial Part 107 operations—media photographers operating in unrestricted airspace. It is also possible that they involve malevolent intelligence gathering (ISR) conducted by a foreign power seeking knowledge about the construction of US aircraft carriers, This may therefore involve a counterintelligence threat, warranting enhanced detection and security.



Figure 12. Drone (UAS) Flight Paths Above Oil Terminals and Storage Tanks (Courtesy Aerial Armor, a Dedrone Company)



Figure 13. Drone (UAS) Flight Paths Above CV-67(Courtesy Aerial Armor, a Dedrone Company)



Figure 14. 3D Models of (CV-63) and an Aerial Drone Taking Photos (Authors' Elaboration)

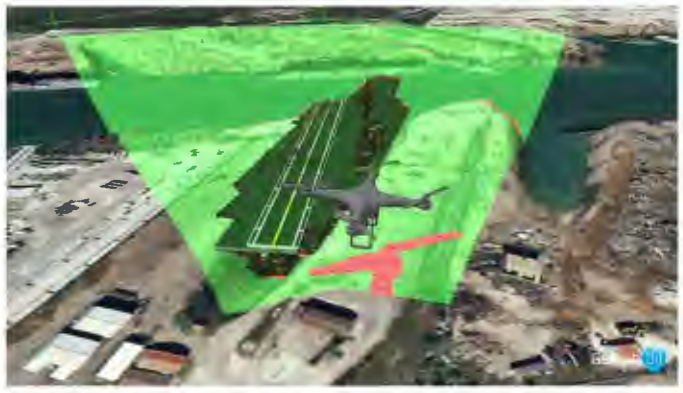


Figure 15. 3D Model of (CV-63) and 3D model of Drone taking Photos with Viewshed Analysis, Depicting in Green what the drone is imaging from that Vantage Point. This is the type of Geospatial Tool that Can be Integrated into a Drone Sensor Command and Control Platform For Threat Assessment and Incident Response. (Authors' Elaboration)

Overall Drone Threat Assessment

The project team recognizes that drone threats are unfamiliar to many port operators, tenants, and public safety personnel. At first glance, these threats appear to be in the realm of science fiction.[36] Yet, contemporary developments in Ukraine have shown that drones of all varieties

are now part of the current and future warfare toolkit. Similar events in Mexico's crime wars show that sub-national groups, drug cartels and gangs, can and do employ drones as part of their repertoire. Terrorists are also embracing drones as part of their TTPs. These various threat vectors are discussed in the preceding Part 2 of this report. Based upon the factors described in that discussion, the project team assesses that drone threats are both a current and emerging threat to US ports in general and the Port of Brownsville (POB) and potentially other Texas ports in specific.

- The *highest level* of current drone threat involves small **Uncrewed Aerial Systems (sUAS)**. That threat is assessed as *Moderate to High.* The level of sUAS threat can be expected to grow as the Port of Brownsville expands and increases it activity.

- The *next potential level of threat* involves **Uncrewed Maritime Vessels (UMVs), including surface and subsurface vessels**. These are currently evident in military settings or used by criminal cartels to smuggle drugs. These vessels can be weaponized and are likely to become a future factor in port operations. This threat is assessed as *Moderate*, with the potential to grow as the use of these vessels increases and the port grows.

- The *lowest level of threat* is posed by **Uncrewed Ground Vehicles (UGVs)**. This threat is assessed as *Low–Moderate.* While UGVs have been used in combat (specifically in Ukraine), and remotely piloted vehicle borne improvised explosive devices (VBIEDs) have been used by terrorists in the Middle East, these type devices are not currently in wide use in the civil sector. The UGV threat can be detected and mitigated with current defense-in-depth security measures already in place, such as perimeter fencing, cameras, and security patrols.

The threat of multi-modal drone threats, involving drone swarms (of various types) is assessed as a potential future concern. Current efforts to enhance security for drone threats should prioritize sUAS. For UAS threats, awareness of airspace dynamics is essential the following discussion provides an airspace assessment of the port and its environs.

There are five distinct areas where drones are restricted from flying without prior authorization in the vicinity of the Port of Brownsville. In addition to the Class D airspace around the Port of Brownsville, there are flight restrictions at Palo Alto Battlefield National Historic Park, areas along the land and maritime border between the United States and Mexico, and the area around the SpaceX Boca Chica Launch Facility.

Temporary Flight Restrictions over Critical Infrastructure

The Department of Homeland Security Cybersecurity & Infrastructure Agency (DHS CISA) identifies sixteen critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.[37]

One of the sixteen critical infrastructure sectors in the Transportation Systems Sector. One of the seven key subsectors of the Transportation Systems Sector is the Maritime Transportation System which includes 361 ports, and more than 25,000 miles of waterways, including the Port of Brownsville.[38]

Further located within the Port of Brownsville are tenants which may themselves fall within one of the sixteen critical infrastructures, including the chemical sector.

In the 114th Congress (2015-2016), the FAA Extension, Safety, and Security Act of 2016 was passed and signed into law. A crucial provision within this legislation was Section 2209, which mandated the Secretary of Transportation to establish a streamlined procedure enabling applicants to formally request the Administrator of the FAA to impose restrictions or prohibit the operation of unmanned aircraft near fixed site facilities. The implementation of this process was required within 180 days of the bill's enactment. Consequently, on 15 July 2016, President Obama signed the bill into law as Public Law No. 114-190.

The Act established that the following may be considered fixed site facilities: Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment, Oil refineries and chemical facilities, Amusement parks, Other facilities that warrant such restrictions

Operational and Legal Issues

Operational and legal issues related to countering drone threats, especially counter-UAS (C-UAS) are complex and evolving. This section includes a discussion of counter-UAS issues from an operational perspective. First the discussion will address the core components of a counter-UAS framework. Next, the legal issues involved in implementing and sustaining that framework are reviewed.

What is Counter-UAS?

There are varying definitions of Counter-UAS that range from simple descriptions to wordy legal definitions. Although consensus may be lacking on how to specifically define Counter-UAS, a common framework is important that takes into account the varying mission types and legal authorities of organizations or agencies that may perform this mission. Given the current legal and operational Counter-UAS landscape in the United States and other countries around the globe, the following is offered as a universal construct for Counter-UAS operations:

> *"Counter-UAS is the deployment and use of logical, legally authorized technologies, tactics, techniques, and procedures to provide airspace awareness and protection to critical infrastructure, assets, and mass gatherings."*[39]

Current Legal and Legislative Landscape for Counter-UAS in the United States

The following section provides an overview of the current legal and legislative landscape for counter-UAS activities within the United States.[40]

Department of Energy and the Department of Defense

The 2017 National Defense Authorization Act (NDAA) provided legal authority from Congress for both the Department of Energy (DOE) and the Department of Defense (DOD) to protect covered facilities or assets.

The authority for DOD specifically referred to protect covered facilities or assets in the United States, territories, and possessions that meet requirements as determined by legislation. The Army, Navy, Air Force, and Marines are separately responsible for the protection of their own facilities.[41] The status of the protection of DOD facilities covered by the 2017 NDAA is not public knowledge, however, it can be assumed that it is ongoing. Earlier this year, the Marines submitted a Request for Information (RFI) "looking for interested parties to address the United States Marine Corps' (USMC) force protection installation security capability gap for the detection, identification, tracking and defeat of small Unmanned Aircraft Systems (sUAS) operating within the vicinity of specific mission sets associated with 10 U.S. Code Section 130i."[42]

The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the DOE is responsible for maintaining and enhancing the safety, security, and effectiveness of the U.S. nuclear weapons stockpile, among other important functions. NNSA has implemented "No Drone Zones" at restricted sites such as Los Alamos National Laboratory, Nevada National Security Site, Pantex, and Y-12 National Security Complex. NNSA has reported that Counter-UAS systems are protecting sensitive locations such as Y-12 and Pantex.[43]

Department of Justice and the Department of Homeland Security

The FAA Reauthorization Act was signed into law on 5 October 2018. The 2018 Act is a wide-ranging reauthorization measure that provided the Federal Aviation Administration (FAA) with a host of crucial new authorities and responsibilities on an extensive range of aviation issues, including enhancing safety, improving infrastructure, and enabling innovation. The Act also extended the FAA's funding and authorities through Fiscal Year 2023.[44]

The FAA Reauthorization Act included Division H, also known as the "*Preventing Emerging Threats Act of 2018*." This portion of the FAA Reauthorization Act authorized the Department of Justice (DOJ) and Department of Homeland Security (DHS) to engage in Counter-UAS activities that would otherwise violate relevant provisions of federal law.[45]

The Department of Justice (DOJ) or Department of Homeland Security (DHS) authorities have been exercised numerous times since the law was passed in 2018.[46] Although the agencies don't typically publicly disclose their Counter-UAS operations, open-source examples include the United States Secret Service (USSS), DHS Science & Technology Directorate (DHS S&T) and the USCG collaborating on a pilot initiative aimed at testing and evaluating cutting-edge technologies designed to detect, identify, and address the potential risks posed by unmanned aircraft systems; and a DOJ press release in October 2020 addressed the forecast of an increase in the use of Counter-Unmanned Aerial Systems (C-UAS) Protection Activities and

Criminal Enforcement Actions.[47] The release noted that, "From Oct. 1, 2019, to Sept. 30, 2020, the FBI (Federal Bureau of Investigation) has provided counter-UAS support at dozens of events, including national level sporting events such as Super Bowl LIV in Miami, the 2019 World Series, and the 2020 Rose Bowl Game, as well as at other major events that draw large crowds like Washington, DC's A Capitol Fourth and New York City's New Year's celebration."[48]

Counter-UAS Technologies For Agencies That Are Not DOJ, DHS, DOD, and DOE

The Counter-UAS authorities for state, local, tribal, and territorial (SLTT) public safety and law enforcement agencies, or owners and operators of critical infrastructure who seek to use technologies to counter the threat of careless and clueless, or nefarious drone operators are limited as of 1 August 2023.[49]

SLTT agencies and critical infrastructure owners and operators are limited by federal laws that may prevent, limit, or penalize the sale, possession, or use of UAS detection and mitigation capabilities. The capabilities involved in detecting and mitigating UAS have the potential to raise concerns related to federal criminal laws concerning surveillance, unauthorized access or damage to computers, and aircraft damage.[50]

Technologies that disrupt, disable, or destroy a drone are generally referred to as drone mitigation technologies. Mitigation technologies, with the capability to disrupt, disable, or destroy a drone, are not legally permissible for SLTT and owners and operators of critical infrastructure.[51]

There are some drone detection technologies that are able to be used by SLTT and owners and operators of critical infrastructure. This would include systems such as radars (with the appropriate license from the FCC), electro-optical/infrared (EO/IR) cameras, and acoustic systems. Some radio frequency (RF) detection technologies that monitor the communications passed between the ground control station (remote control) and the drone may implicate federal laws such as The Pen/Trap Statute and Wiretap Act. Recommendations on the testing, acquisition, and purchase of Counter-UAS technology are included later in this paper.[52]

Current Federal Legislative Landscape for the Expansion of the Use of Counter-UAS Technologies

Neither the Department of Justice (DOJ) or Department of Homeland Security (DHS) have the resources to provide airspace awareness and protection to all critical infrastructure, assets, or mass gatherings that warrant or require additional safety and security. The delegation of authorities to our nation's law enforcement agencies and critical infrastructure has sparked significant discussion within the security industry and law enforcement circles, among other sectors. It is widely acknowledged that the implementation of these authorities and technologies at the local level, coupled with appropriate training and oversight, would enhance the security of our local communities and infrastructure.[53]

In April 2022, the Biden Administration released its Domestic Counter-Unmanned Aircraft Systems National Action Plan.[54] The Plan contained eight (8) key recommendations for action:

1. Work with Congress to enact a new legislative proposal to expand the set of tools and actors who can protect against UAS by reauthorizing and expanding existing counter-UAS authorities for the Departments of Homeland Security, Justice, Defense, State, as well as the Central Intelligence Agency and NASA in limited situations. The proposal also seeks to expand UAS detection authorities for state, local, territorial and Tribal (SLTT) law enforcement agencies and critical infrastructure owners and operators. The proposal would also create a Federally-sponsored pilot program for selected SLTT law enforcement agency participants to perform UAS mitigation activities and permit critical infrastructure owners and operators to purchase authorized equipment to be used by appropriate Federal or SLTT law enforcement agencies to protect their facilities;

2. Establish a list of US Government authorized detection equipment, approved by Federal security and regulatory agencies, to guide authorized entities in purchasing UAS detection systems in order to avoid the risks of inadvertent disruption to airspace or the communications spectrum;

3. Establish oversight and enablement mechanisms to support critical infrastructure owners and operators in purchasing counter-UAS equipment for use by authorized Federal entities or SLTT law enforcement agencies;

4. Establish a National Counter-UAS Training Center to increase training accessibility and promote interagency cross-training and collaboration;

5. Create a Federal UAS incident tracking database as a government-wide repository for departments and agencies to have a better understanding of the overall domestic threat;

6. Establish a mechanism to coordinate research, development, testing, and evaluation on UAS detection and mitigation technology across the Federal government;

7. Work with Congress to enact a comprehensive criminal statute that sets clear standards for legal and illegal uses, closes loopholes in existing Federal law, and establishes adequate penalties to deter the most serious UAS-related crimes; and

8. Enhance cooperation with the international community on counter-UAS technologies, as well as the systems designed to defeat them.[55]

Recommendations One, Two, Three, Five and Seven, if enacted, would have a direct positive effect on the safety and security of the protection of critical infrastructure, assets, and mass gatherings throughout the United States.[56]

Texas, Cameron County, and Brownsville UAS Laws and Ordinances

Texas Law[57]

According to the *AUVSI Drone Prepared* website, Texas emerged as the frontrunner in drone policy, displaying remarkable activity with the introduction of twenty bills and the passage of

seven measures that reached the Governor's desk.[58] The significant surge in legislative efforts can be attributed to two key factors. Firstly, in March of 2022, a federal judge declared Texas' drone regulatory code, Chapter 423, as unconstitutional.[59] Secondly, the Texas legislature convenes only during odd-numbered years, placing pressure on lawmakers to swiftly reconstruct their drone regulatory framework within a condensed five-month session.

Senate Bill 947 (2023). This law, signed by the Governor and effective on 1 September 2023, makes it a felony to knowingly damage, destroy, or impair a critical infrastructure or facility using a drone.

House Bill 1833 (2023). This law, signed by the Governor and effective on 1 September 2023, makes it a felony to engage in criminal mischief with a critical infrastructure facility or public power supply through the use of a drone.

No Cameron County or Brownsville UAS-related laws were found during research.

Discussion and Recommendations

The Port of Brownsville is growing and will increase its threat exposure as its operations expand. This growth comes simultaneously with a rise in global tensions, crime, and the implementation of new and emerging technologies. Contemporary military operations, terrorism, and organized crime (including CAGs) are all embracing drones of all types to further their goals. These drone uses in conflict and crime are primarily sUAS but other platforms UMVs and UGVs are also entering the mix. The primary threat faced by the POB involves UAS threats. Therefore counter-UAS measures are the greatest current need. The following section provides and overview of C-UAS technologies and capabilities and provides a set of recommendations to meet current threats and better anticipate future threats (and opportunities).

Overview of Counter-UAS Technologies and Capabilities[60]

The two general categories of counter-UAS technologies previously mentioned are detection systems and mitigation systems. For the purposes of this report, we will further explore detection technologies only as this type of technology is more likely to be utilized by the Port of Brownsville Police Department in the foreseeable future.

UAS detection systems refer to technology that can detect, locate/track, and/or classify/identify drones. The four common categories of UAS detection technologies are:

- Radar
- Passive RF
- Electro-Optical and Infrared (IR) cameras
- Acoustic sensors

Radars function by emitting a focused radio signal with a known frequency and power in a specific direction. They subsequently detect the return signal that is reflected back from the

target. Radars come in two variants: two-dimensional (2D) and three-dimensional (3D). The primary function of 2D radars is to determine the direction and distance to a target. On the other hand, 3D radars go beyond that by additionally providing information about the target's altitude.

From an operational perspective, a counter-UAS radar by itself is generally an ineffective tool. Operators would be required to interpret the suspected drone detections from the radar without any method to verify the information with other sensors. This task is made even more difficult as motions such as hubcaps on a vehicle, flags waving in the wind, rotating sprinkler systems, and air conditioning fans are examples of everyday activities that can result in false positive radar detections. Radar is a more effective tool when, at minimum, it is integrated with an EO/IR camera where the camera can "slew to cue" to suspected targets from a radar, RF detection sensor, or an acoustic sensor.

Passive RF sensors depend on antennas to receive RF signals, which are then analyzed by computers. These signals are specifically associated with the communication between the Ground Control Station (GCS) and the Unmanned Aerial Vehicle (UAV). Passive RF sensors conduct analysis of radio signatures and modulations unique to UAS. These sensors possess the ability to identify specific UAS models and manufacturers, while also determining the origin of the signal transmission, which could be the UAV itself or the GCS.

Many passive RF sensors employ databases containing established radio signatures of known unmanned aerial systems. These systems compare the detected signals with those stored in the database to classify or identify the UAS. Periodic updates to the signature libraries are carried out to incorporate new UAS signatures and revise existing ones. Some Passive RF sensors, based on their functionality, may violate Federal law, such as the Wiretap Act and the Pen/Trap Statute. Because of this, it is strongly recommended that prior to the testing, acquisition, installation, or use of Counter-UAS systems, including "passive" or "detection only" systems, that entities fully understand how the system functions and seek the advice of counsel experienced with both federal and state criminal, surveillance, and communications laws.

EO/IR sensors, also known as electro-optical/infrared sensors, are advanced digital video cameras specifically designed to gather environmental data across both the visible and infrared light ranges. These sensors are capable of capturing electromagnetic radiation encompassing wavelengths spanning from 400 nanometers to 1 millimeter. Similar to the previous statement regarding the radar, an EO/IR camera with no advanced artificial intelligence/machine learning (AI/ML) capabilities, or that is not integrated with other detection sensors, such as a radar, RF sensor, or acoustic sensor is generally ineffective. Without those capabilities, an operator is generally left to manually search for drones in the sky. Some EO/IR camera systems have AI/ML capabilities where objects in the airspace are identified, and in some cases classified. Many of these systems are built to specifically to identify and classify drones or drone-like objects transiting through the airspace.

Acoustic sensors operate in a passive manner by utilizing microphone arrays with exceptional sensitivity, combined with audio analysis applications. Their purpose is to detect, track, and

identify sounds generated by the motors and propellers of UAVs. Each type of UAV propeller produces distinct acoustic patterns, enabling the creation of a comprehensive library of these sound signatures. This library facilitates the identification of various UAV types and provides a means to ascertain the approximate direction of the sound source.

Each of the different types of Counter-UAS detection systems can be operated separately, using their own separate graphical user interface, or GUI. When two or more UAS detection systems are being used, it is more efficient to have the sensors integrated into a common operating picture (COP) for efficiency and effective operational decision making.

Remote Identification for Drones

Beginning 16 September 2023, the FAA's Remote ID (RID) rule will become effective. All commercially flown UAS, regardless of weight, are required to broadcast RID message elements. All recreational UAS that weigh 250g (.55 lbs.) or higher are also required to broadcast Remote ID message elements.[61]

Remote ID is akin to a "digital license plate" in the sky. To comply with RID regulations, an operator has a few options. They can either use a Standard RID UAS equipped with built-in RID broadcast capabilities or attach a Broadcast RID Module to the drone. Otherwise, the drone must either operate in Federally Recognized Identification Areas (FRIA), which are specially approved non-RID areas, or remain grounded.[62]

Counter-UAS Considerations

Counter-UAS or airspace awareness and protection is not just the application of technology to counter the threat of UAS. A solid foundation for a department program begins with policies and procedures, training, developing technology user requirements, and then, if authorized, integrate logical technology to enhance existing security measures.

Policies and Procedures

Policies and procedures are the first step in establishing a Counter-UAS program. Developing a Counter-UAS policy will provide general guidelines that outline the organization's plan for tackling the airspace awareness and security issue. The policies can provide a bridge between the organization's security vision and its day-to-day operations. Counter-UAS procedures explain specific actions for carrying out the Counter-UAS policy. Procedures provide a blueprint for how to deal with specific solutions. Examples include:

- What happens when a suspected drone is visually detected flying over the port?
- What are the procedures to respond to a suspected drone threat?
- What happens if a drone crashes within the Port of Brownsville?

C-UAS Training

Training provides an opportunity to learn new skills and grow, not only as an individual, but as an organization. Recommended training for the Port of Brownsville Police Department includes:

- UAS Fundamentals and Threats. Understanding UAS capabilities, threats, and fundamentals.
- Basic Airspace Fundamentals. This training would focus on understanding the basics of airspace rules for drones, and Texas drone laws related to critical infrastructure
- Basic Counter-UAS Principles. Responding to suspected drone threats, pilot interviews, safety and threat considerations, and other related topics.

Develop Technology User Requirements

The integration of Counter-UAS technology into the existing physical security infrastructure of the Port of Brownsville should be a carefully crafted strategy that includes legally authorized and logical equipment solutions.

Traditionally, some companies in the security industry will often tell critical infrastructure or public safety entities, what is needed. In fact, it should be just the opposite. The Port of Brownsville Police Department, should work with experienced professionals to understand the Counter-UAS landscape, and develop user requirements for drone detection equipment based on their department's unique needs, then find and test system that meet their pre-determined criteria.

Information-Sharing and Threat Warning and Analysis

Developing an information sharing and analysis program for drone threats at the Port of Brownsville and beyond can help establish appreciation of threat potentials and trends. It can also help build a baseline of current threats and intrusions that can inform threat assessment and incident response. Such an effort can start internally, sharing information among the POB and its tenant and public safety partners. The effort could be then expanded to link Texas Ports, then US Gulf Ports, nationally, and then internationally. This effort could be linked to the Texas Fusion Center and its Infrastructure Liaison Officer (ILO) Program.[63] Broader efforts throughout Texas Ports, at Gulf Ports, nationally, and internationally could also become valuable.[64]

Recommended Courses of Action

The drone assessment team recommends the following courses of action for the Port of Brownsville. It is recommended that the Port of Brownsville develop and implement a comprehensive counter-drone framework. This framework should prioritize measures to mitigate and counter threats from Unmanned/uncrewed Aerial Systems—especially small UAS (sUAS) platforms. That is the first step is developing and implementing a Counter-UAS (C-UAS) Program. Next measures to address emerging drone threats, such as uncrewed ground vehicles (UGVs) and uncrewed maritime vessels (UMVs) can be tackled.

C-UAS/C-UMV Efforts

Training. Counter-UAS efforts should start with building awareness of the UAS threat to the port through awareness training. The POB and POB Police should sponsor a basic *UAS awareness training* session for port personnel, including all port police and security officers, pilots port tenants (especially their security managers), and cooperating public safety agencies (law enforcement and fire) that operate at or proximate to the port. This training could include a one-day orientation for all participants and potentially a two-day specialist course for public safety personnel (including POB Police, Cameron County Sheriff's, Constables, Texas Department of Public Safety (DPS), Brownsville Fire, and Texas Parks and Wildlife Game Wardens. US Coast Guard, Border Patrol, and Customs and Border Protection officials should be invited as observers.

Policies and Procedures. The Port of Brownsville should develop a comprehensive set of policies and procedures defining the POB posture on UAS. This policy and procedures should include SOPs for day-to-day operations and EOPs for emergencies involving UAS incursions resulting in injury, death, or property damage. These documents should set the basic framework of the port's efforts, mandate training for port personnel, and define the need for on-going assessment of the UAS threat in specific and related drone threat in the future. Cooperative arrangements, such as mutual aid for UAS response, joint training, and joint operations should be specified. In addition information sharing, alerts and warning for drone threats should be articulated.

Geospatial Information Systems (GIS) and Geospatial Intelligence (GeoINT). The POB should consider development of a comprehensive geospatial analysis capability including development of GIS tools and data sets for use in routine and emergency purposes (including crisis and disaster management). These tools can be integrated into command and control/dispatch systems and linked with airspace awareness tools to guide response.

C-UAS/C-UMV Drone Detection. The POB should consider implementing systems and applications, such a drone sensor platform, to detect and track UAS incursions into the port's operational area that may interfere with port operations. The POB should commission a *sensor engineering study* to assess the best option for C-UAS detection, including the potential of multiple systems to maximize detection. An engineering study to asses similar drone detection capabilities for UMVs in the ship channel and approaches should also be considered. Optimally, the command and control/sensor display system should be able to display all modes of drone incursion and then integrate that data into a comprehensive geospatial display (using a common GIS platform). The resulting sensor network could be designed to build a basic (foundational) system operated by the POB that can be expanded to integrate addition tenant-specific feeds or surge detection capability during designated maritime security (MARSEC) levels, specifically MARSEC Level 2 or 3.[65]

Drone (UAS) Response Capacity. The POB Police should consider developing a long-range drone response capability (Drones for Good) where sUAS can be used by Port Police to evaluate and assess the threat of drone incursions over Port of Brownsville airspace, as well as monitor and prepare response for critical incidents and emergencies. This capacity could be

an organic port-specific program or a cooperative venture with adjacent law enforcement agencies such as the Cameron County Sheriff and the City of Brownsville Police.

Drone Threat Information-Sharing. The Port of Brownsville Police should consider developing or collaborating in the development of a port threat information and analysis/warning system for drone threats (specifically UAS and UMV) threats to ports. This initiative could start at the POB and share information with port tenants and plots servicing the port. It could then be expanded to include all Texas Ports, US Gulf Ports, Nationally, and then Internationally.

Advocacy and Development of Counter Drone (C-UAS/C-UMV) Legislation and Ordinances. The Port of Brownsville, through the Brownsville Navigation District Board of Commissioners should advocate for the development of enhanced Texas State laws and County Ordinances to enhance the level of legislation necessary to protect the port and provide effective enforcement options for the Port Police and cooperating law enforcement agencies in Cameron County. This effort could build on the prohibitions on unmanned aircraft at the Port of Corpus Christi Authority (Item 614(I) 12-25-15) pursuant to Texas Government Code, Section 423.0045 et. seq. described in note 1 of this report. This should focus on clarifying the vagueness in the statute's definitions. This effort could be conducted in concert with the Texas Ports Association.[66]

Building this level of response will take time and an investment in financial and human resources. Optimally, the POB will start developing policy and procedures and then the training needed to sustain effective C-UAS and C-UMV capabilities. This will require further analysis and engineering studies for full implementation.

Author Biographies

Dr. John P. Sullivan was a career police officer, now retired. Throughout his career he has specialized in emergency operations, terrorism, and intelligence. He is an Instructor in the Safe Communities Institute (SCI) at the University of Southern California, Senior El Centro Fellow at *Small Wars Journal*, and Contributing Editor at *Homeland Security Today*. He served as a lieutenant with the Los Angeles Sheriff's Department, where he has served as a watch commander, operations lieutenant, headquarters operations lieutenant, service area lieutenant, tactical planning lieutenant, and in command and staff roles for several major national special security events and disasters. Sullivan received a lifetime achievement award from the National Fusion Center Association in November 2018 for his contributions to the national network of intelligence fusion centers. He has a PhD from the Open University of Catalonia, an MA in urban affairs and policy analysis from the New School for Social Research, and a BA in Government from the College of William & Mary.

George W. Davis Jr. specializes in providing technology solutions to the defense and public safety sectors. He is a specialist in geospatial Information Systems and Geospatial Intelligence (GeoINT). After the 9/11 2001 attacks at the World Trade Center he supported the Emergency Mapping and Data Center (EMDC), mapping the area around Ground Zero as well as most of Manhattan south of Canal Street. He served as Geospatial Information Coordinator for the New York Metro Chapter of InfraGard. He has worked with the Department of Homeland Security (DHS), New York Police Department (NYPD), FBI, Los Angeles Sheriff's Department (LASD), the Lower Manhattan Security Initiative, and the Business Emergency Operations Center (BEOC) Alliance in New Jersey. Projects included mapping and aerial photography for several national and international disasters (Hurricanes: Charley, Katrina, Rita, Ike and Hugo), the Haiti Earthquake and the Sri Lanka Tsunami, using LIDAR, 3D Modeling software, Unmanned Aerial Systems (Drones), Thermal Imaging, Ground Penetrating Radar (GPR), GPS, and other remote sensing technologies.

Tom Adams is CEO of AeroVigilance and Co-Founder of C-UAS Hub. Tom retired from the Federal Bureau of Investigation (FBI) after 20 years of service in October 2022. He spent the early part of his federal law enforcement career investigating white-collar crime matters in Florida and Texas. In 2008, Tom completed the FBI's Hazardous Devices School and became a Special Agent Bomb Technician (SABT), a role in which he served for over 11 years. During his time as a SABT, he deployed to Africa, the Middle East, Europe, and Southern Asia in support of US counter-terrorism efforts. Tom's last three years in the FBI were spent as a Supervisory Special Agent in the Counter-UAS Program. In this role, he led the evolution of the team, including developing a training program, policies and procedures, and operational standards. Tom has a bachelor's degree from Montana State University in Biomechanics, and a master's degree from Embry-Riddle Aeronautical University in Unmanned Systems. Prior to serving in the FBI, Tom was a Medical Service Corps Officer in the US Army. Tom currently serves as the Co-Chair of the Operating

Requirements Working Group of the FAA UAS Detection and Mitigation Aviation Rulemaking Committee.

Senior Reviewer Biography

Dr. Richard Rotanz has over 50 years of experience in the fire service, emergency management, research and academia. His eclectic career has had him functioned as program manager in New York City's Department of Health and Mental Hygiene; co-developed and perform as the Executive Director of the Applied Science Foundation for Homeland Security; co-developed Adelphi University's graduate degree in Emergency Management; created and performed as the first Commissioner for the Office of Emergency Management of Nassau County, New York. He also served in the New York City Fire Department, working through the ranks and special divisions such as the Safety Command and with Special Operations Command. After such assignments he was detailed by the mayor's office as Deputy Commissioner of New York City's Office of Emergency Management, located in World Trade Center 7. In this detail, he was responsible for research & planning, and to organize and manage the emergency operations center during major events. During the September 11th attacks upon New York City, he re-instituted and relocated the destroyed emergency operation center to Pier 92 and managed the multi-organization response of over 120 agencies, organizations, and businesses, to the 9-11 tragedy.

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Endnotes

[1] A Security Vulnerability Assessment (SVA) of the Port of Brownsville was recently performed for the Institute of Homeland Security at Sam Houston State University. That Report identified concerns about aerial drones (UAS) and recommended the following: "**Recommendation: Commission UAV Assessment:** Several tenants raised concerns about drones flying in and around the port. At the time of this assessment, there was no clear consensus on whether the drones were being operated by ship enthusiasts capturing photos of a decommissioned aircraft carrier, nature lovers, or more nefarious groups. The pending UAV assessment and drone mitigation plan will address the concerns expressed and should consider implementing policies prohibiting drones similar to what other ports in Texas have enacted." See "Security Vulnerability Assessment: Port of Brownsville, May 2023" (Huntsville: Sam Houston State University, Institute of Homeland Security, May 2023), at page 25. That recommendation referred to prohibitions unmanned aircraft at the Port of Corpus Christi Authority (Item 614(l) 12-25-15 pursuant to Texas Government Code, Section 423.0045 et. seq. See https://portofcc.com/wp-content/uploads/TARIFF_ITEM_614.pdf and https://texas.public.law/statutes/tex._gov%27t_code_title_4_subtitle_b_chapter_423. In addition, see Note 90 of this report for a discussion of the issues of that led to major portions of the current legislation to be struck down.

[2] Examples of aerial, or Uncrewed Aerial Systems (UAS), risks include threats to public venues such as stadia (stadiums). For an overview of that risk and associated responses issues (many of which are also applicable in other settings, see the series referenced in the series of papers: *Detecting Drone threats at Stadiums*, https://ihsonline.org/Research/Technical-Papers/Detecting-Drone-Threats-at-Stadiums: Nathan P. Jones, John P. Sullivan, and George W. Davis, "Detecting Drone (Unmanned or Uncrewed Aerial System) Threats to Stadiums (Stadia) and Public Venues: Framing the Issue: (Report No. IHS/CR-2022-2023). The Sam Houston State University Institute for Homeland Security. August 2022; John P., Sullivan, Nathan P. Jones, and George W. Davis, "Detecting Drone (Unmanned or Uncrewed Aerial System) Threats to Stadiums (Stadia) and Public Venues: Operational Perspectives" (Report No. IHS/CR-2022-2024). The Sam Houston State University Institute for Homeland Security. August 2022; George W. Davis, John P. Sullivan, and Nathan P. Jones, "Detecting Drone (Unmanned or Uncrewed Aerial System) Threats to Stadiums (Stadia) and Public Venues: Technical Implementation and Integration (Report No. IHS/CR-2022-2025). The Sam Houston State University Institute for Homeland Security. August 2022. Unmanned aerial vehicle (UAV) threats against nuclear facilities are also a concern, see Jae San Kim, "A Study on the Possibility of Unmanned Aerial Vehicles (UAV)' Threat in Nuclear Facilities," *Transactions of the Korean Nuclear Society Autumn Meeting Goyang, Korea,* 24-25 October 2019, https://www.kns.org/files/pre_paper/42/19A-202-김재산.pdf. Electric power distribution is also at risk, see Kevin Killough, "Drones A Very Real Threat To Power Substations And Other Critical Infrastructure," Cowboy State Daily, 8 February 2023, https://cowboystatedaily.com/2023/02/08/drones-a-very-real-threat-to-power-substations-and-other-critical-infrastructure/.

[3] See Alan Taylor, "Photos: Ukraine's Battlefield Drones," *The Atlantic*, 24 May 2023, https://www.theatlantic.com/photo/2023/05/photos-ukraine-war-drones/674160/; "How Ukrainians modify civilian drones for military use," *The Economist*, 8 May 2023, https://www.economist.com/science-and-technology/2023/05/08/how-ukrainians-modify-civilian-drones-for-military-use: John Amble, "MWI Podcast: Who Innovates Wins? Drones and Adaptation in the Ukraine War," *Modern War Institute*, 15 January 2023, https://mwi.westpoint.edu/mwi-podcast-who-innovates-wins-drones-and-adaptation-in-the-ukraine-war/.

[4] Benjamin Fogel and Andro Mathewson, "Will the Drone War Come Home? Ukraine and the Weaponization of Commercial Drones, *Modern War Institute*, 22 August 2022, https://mwi.westpoint.edu/will-the-drone-war-come-home-ukraine-and-the-weaponization-of-commercial-drones/.

[5] Elias Yousif, "Drone Warfare in Ukraine: Understanding the Landscape," *Stimson*, 30 June 2022, https://www.stimson.org/2022/drone-warfare-in-ukraine-understanding-the-landscape/; The Explosive payload figure is attributed to Eric Schmidt, "The Future of War Has Come in Ukraine: Drone Swarms," *Wall Street Journal*, 7 July 2023, https://www.wsj.com/articles/the-future-of-war-has-come-in-ukraine-drone-swarms-kamikaze-kyiv-31dd19d7.

[6] Remotely piloted car bombs (vehicle borne improvised explosive devices or VBIEDs) have been technically feasible for years and some violent non-state groups have been manufacturing them for years. Yet, despite this remote control capability, these RC-VBIEDs have not been widely used. See Hugo Kaaman, "The Myth of the Remote-Controlled Car Bomb," Report n.15, European Eye on Radicalization, September 2019, https://eeradicalization.com/wp-content/uploads/2019/09/Hugo-Report-Remote-VBIEDs-Final.pdf. Battlefield use in Ukraine, coupled with the potential rise in autonomous vehicles (both cars and trucks), may change the equation in the future. See Max Hunder, "Ground vehicles are the new frontier in Ukraine's drone war," *Reuters*, 13 July 2023, https://www.reuters.com/world/europe/ground-vehicles-are-new-frontier-ukraines-drone-war-2023-07-13/; John P. Sullivan, "Robotics in Urban Conflict and Megacities," in *Batmobiles in Gotham City: Unmanned Ground Vehicles & Manoeuvre in the Future Urban Environment*, Hannah Croft, Ed., *Defence iQ*, 15 November 2019, https://www.academia.edu/40940306/Robotics_in_Urban_Conflict_and_Megacities

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[10] For a detailed survey, see Robert J. Bunker and John P. Sullivan, Eds. *Criminal Drone Evolution: Cartel Weaponization of Aerial IEDs*, Bloomington: Xlibris, October 2021.

[11] John P. Sullivan and Robert J. Bunker, "Mexican Cartel Strategic Note No. 18: Narcodrones on the Border and Beyond," *Small Wars Journal*, 28 March 2016, https://smallwarsjournal.com/jrnl/art/mexican-cartel-strategic-note-no-18-narcodrones-border-and-beyond; Aaron R. Schmershal, "Fifty Feet Above the Wall: Cartel Drones in The U.S.–Mexico Border Zone Airspace, And What To Do About Them," Unpublished Master's Thesis. Monterey: Naval Post Graduate School, March 2018, https://apps.dtic.mil/sti/citations/AD1052881.

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[14] An armed drone was used to threaten Baja Public safety secretary, Gerardo Sosa Olachea, at his residence on Tecate in July 2018. See John P. Sullivan, Robert J. Bunker and David A. Kuhn, "Mexican

Cartel Tactical Note #38: Armed Drone Targets the Baja California Public Safety Secretary's Residence in Tecate, Mexico," *Small Wars Journal*, 6 August 2023, https://smallwarsjournal.com/jrnl/art/mexican-cartel-tactical-note-38-armed-drone-targets-baja-california-public-safety.

[15] Two explosive-laden drones were detonated above Maduro while he made a speech. See Joe Parkin Daniels and Mariana Zúñiga, "Venezuela's Nicolás Maduro survives apparent assassination attempt," *The Guardian*, 4 August 2018, https://www.theguardian.com/world/2018/aug/04/nicolas-maduros-speech-cut-short-while-soldiers-scatter.

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The Institute for Homeland Security at Sam Houston State University is focused on building strategic partnerships between public and private organizations through education and applied research ventures in the critical infrastructure sectors of Transportation, Energy, Chemical, Healthcare, and Public Health.

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Sullivan, J. P., Davis, G. W., & Adams, T. (2023). Drones and Port Security at the Port of Brownsville. Sam Houston State Institute for Homeland Security, (Report No. IHS/CR-2023-1001).

Texas Border Security:
A Strategic Military Assessment

September 2011



COLGEN

America's Premier Landpower Advocate

Barry R. McCaffrey
Robert H. Scales PhD

TEXAS DEPARTMENT OF AGRICULTURE

TODD STAPLES
COMMISSIONER

September 26, 2011

Dear Fellow Texan:

I am pleased to deliver to you this important report entitled "Texas Border Security: A Strategic Military Assessment." This report is the culmination of many efforts that started with rural farmers and ranchers bringing pleas for a secure border to me.

The 82nd Texas Legislature recognized this critical issue and the numerous accounts of cross-border violence and tasked the Texas Department of Agriculture via House Bill 4, to conduct:

> "an assessment of the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry and working in conjunction with other appropriate entities to develop recommendations to enhance border security."

In accomplishing this legislative directive, the Texas Department of Agriculture joined with the Texas Department of Public Safety to jointly commission retired four-star Army General Barry McCaffrey and retired Army Major-General Robert Scales for this unique and strategic assessment.

General Barry McCaffrey is the former Director of the Office of National Drug Control Policy under President Bill Clinton and former Commander of all U.S. troops in Central and South America. Major-General Robert Scales is the former Commandant of the United States Army War College.

The report offers a military perspective on how to best incorporate strategic, operational and tactical measures to secure the increasingly hostile border regions along the Rio Grande River. It also provides sobering evidence of cartel criminals gaining ground on Texas soil.

As Texas continues to seek and deliver solutions to this attack on our nation's sovereignty, I hope you will find this report enlightening and helpful in our collaborative efforts. We must continue this effort until the rights of property owners to live and work are upheld without threat of violence.

Sincerely yours,

Todd Staples

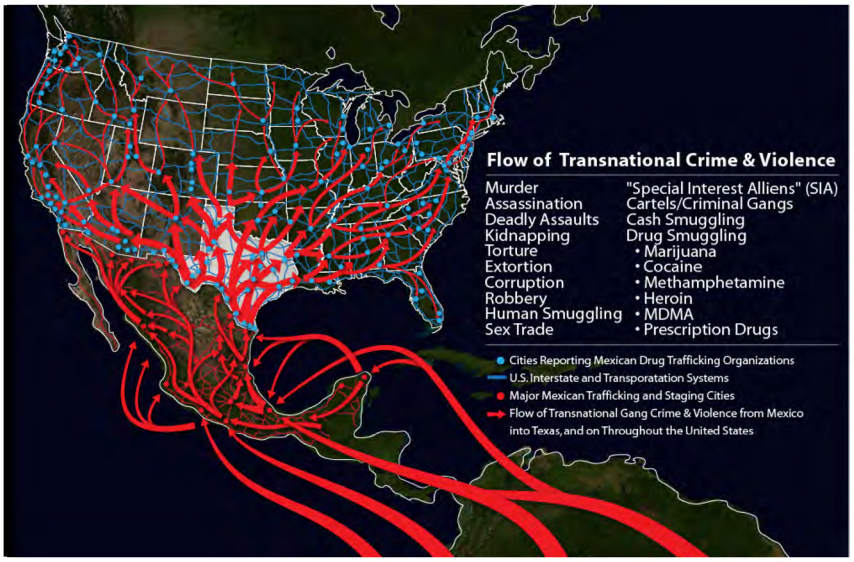
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TEXAS BORDER SECURITY:

A STRATEGIC MILITARY ASSESSMENT

Barry R. McCaffrey
Robert H. Scales, PhD





Biographic Summary of General Barry R. McCaffrey, USA (Ret.)

General Barry R. McCaffrey is President of his own consulting firm based in Arlington, Virginia (www.mccaffreyassociates.com). He serves as a national security and terrorism analyst for NBC News. The Washington Speakers Bureau (www.washingtonspeakers.com) exclusively represents his speeches.

General McCaffrey served as the Bradley Distinguished Professor of International Security Studies from January 2001 to May 2005; and then as an Adjunct Professor of International Security Studies from May 2005 to December 2010 at the United States Military Academy at West Point, NY.

General McCaffrey graduated from Phillips Academy in Andover, Massachusetts and the U.S. Military Academy at West Point. He holds a Master of Arts degree in civil government from American University. He attended the Harvard University National Security Program as well as the Business School Executive Education Program. General McCaffrey is a member Phi Kappa Phi, a national honor society dedicated to the recognition and promotion of academic excellence in all disciplines. In May 2010, he was honored as a Distinguished Graduate by the West Point Association of Graduates at the United States Military Academy.

He has been elected to the Board of Directors of CRC Health Corporation, the National Association of Drug Court Professionals (NADCP), and the Atlantic Council of the United States. He is also: a member of the Council on Foreign Relations; an Associate of the Inter-American Dialogue; Chairman of the Vietnam Veterans Memorial Education Center Advisory Board; and a member of the Board of Advisors of the National Infantry Foundation, as well as the National Armor & Cavalry Heritage Foundation. General McCaffrey has had a long association with the Phoenix House Foundation, a non-profit dedicated to drug and alcohol abuse treatment, prevention and therapy.

General McCaffrey stepped down as the Director of the White House Office of National Drug Control Policy (ONDCP) in January 2001. He was confirmed to the position by unanimous vote of the U.S. Senate in February 1996 and served as a member of the President's Cabinet and the National Security Council for drug-related issues. As ONDCP Director, he coordinated the $19 billion federal drug control budget and developed the *U.S. National Drug Control Strategy*.

General McCaffrey is active in national and international security affairs. He co-chaired the Atlantic Council of the United States NATO Counterterrorism Working Group, leading a delegation to Moscow, Mons, Brussels and Warsaw. In 2008, he participated as member of the Secretary of Public Safety Genaro Garcia Luna's Council of International Experts which concentrates on Mexico's national security within their police and government agencies. In 2004, he addressed the "Security of the Americas Conference" in Mexico City and met with senior officials of the Mexican Government. In April 2004, General McCaffrey helped release the CSIS Bi-national Commission Reports on Migration and Border Security. In February 2002, General McCaffrey visited Cuba and participated in a small group session with Fidel and Raul Castro discussing U.S.-Cuba policies. His article on Cuba can be found at www.mccaffreyassociates.com. General McCaffrey periodically conducts political-military evaluations of Iraq, Afghanistan, Pakistan, Kuwait, Colombia, Mexico, and Saudi Arabia. His After Action Reports on all these trips are available at www.mccaffreyassociates.com.

Among the honors he has received are: Health and Human Services Lifetime Achievement Award For Extraordinary Achievement in the Field of Substance Abuse Prevention (2004); recognized as one of the 500 Most Influential People in American Foreign Policy by World Affairs Councils of America (2004); the Department of State's Superior Honor Award for the Strategic Arms Limitation Talks; the Central Intelligence Agency Great Seal Medallion; the United States Coast Guard Distinguished Public Service Award; the NAACP Roy Wilkins Renown Service Award; the Norman E. Zinberg Award of the Harvard Medical School; the Federal Law Enforcement Foundation's National Service Award; the Community Anti-Drug Coalitions of America Lifetime Achievement Award; and decorations from France, Brazil, Argentina, Colombia, Peru, and Venezuela. Also, General McCaffrey was given the National Leadership Award by the Community Anti-Drug Coalitions of America (2007); Society of American Military Engineers (SAME) "Golden Eagle" recognition (2007); inducted into the US Army Ranger Hall of Fame at US Army Infantry Center, Ft. Benning, GA (2007); The Lifetime of Achievement Award at the American Red Cross Annual Fire & Ice Ball in Washington, DC (2008). Southwest Association of Buffalo Soldiers' "Spirit of the Buffalo Soldier Award" (2008); the W. Stuart Symington Award from the Air Force Association (2008); the National Narcotics Officers' Associations' Coalition's J Dennis Hastert Lifetime Achievement Award (2009); and the "Footsie" Britt Award by The Society of the 30th Infantry Regiment (2010); Government Security News Extraordinary Leadership & Service in Homeland Security Award (2010).

Prior to confirmation as the National Drug Policy Director, General McCaffrey served as the Commander-in-Chief of the U.S. Armed Forces Southern Command coordinating national security operations in Latin America. During his military career, he served overseas for thirteen years and completed four combat tours. He commanded the 24th Infantry Division (Mech) during the Desert Storm 400-kilometer left hook attack into Iraq. At retirement from active duty, he was the most highly decorated four-star general in the U.S. Army. He twice received the Distinguished Service Cross, the nation's second highest medal for valor. He was also awarded two Silver Stars and received three Purple Heart medals for wounds sustained in combat. General McCaffrey served as the assistant to General Colin Powell and supported the Chairman as the JCS advisor to the Secretary of State and the U.S. Ambassador to the United Nations.

Effective 30 August 2011

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Biographic Summary of MG Robert H. Scales, PhD, USA (Ret)

Retired General (Dr.) Robert Scales is one of America's best known and most respected authorities on land warfare. He is currently President of Colgen, LP, a consulting firm specializing in issues relating to landpower, wargaming and strategic leadership. Prior to joining the private sector Dr. Scales served over thirty years in the Army, retiring as a Major General. He commanded two units in Vietnam, winning the Silver Star for action during the battles around Dong Ap Bia (Hamburger Hill) during the summer of 1969. Subsequently, he served in command and staff positions in the United States, Germany, and Korea and ended his military career as Commandant of the United States Army War College. In 1995 he created the Army After Next program which was the Army's first attempt to build a strategic game and operational concept for future land warfare. He has written and lectured on warfare to academic, government, military, and business groups in the United States, Australia, Asia, the Middle East, Europe, and South America. He is the author of two books on military history: *Certain Victory*, the official account of the Army in the Gulf War and *Firepower in Limited War*, a history of the evolution of firepower doctrine since the end of the Korean War. In addition he is an authority on contemporary and future warfare. Concepts and ideas contained in his writings and studies have significant influenced the course of contemporary modernization and reform within the military. He has written two books on the theory of warfare: *Future Warfare*, a strategic anthology on America's wars to come and *Yellow Smoke: the Future of Land Warfare for America's Military*. He was the only serving officer to have written books subsequently selected for inclusion in the official reading lists of three services; *Certain Victory* for the Army, *Firepower* for the Marine Corps and *Yellow Smoke* for the Navy. Congressman Ike Skelton has included *Yellow Smoke* in his National Security Book List sponsored by National Defense University. His latest work, *The Iraq War: a Military History*, written with Williamson Murray has been reviewed very favorably by the New York Times, Atlantic and Foreign Affairs. He is a frequent consultant with the senior leadership of every service in the Department of Defense as well as many allied militaries. He is senior military analyst for The BBC, National Public Radio and Fox News Network. He has appeared as a commentator on The History Channel., The Discovery Channel, PBS, TLC and Star Television. His commentary is carried frequently on all major television outlets in the Peoples Republic of China. He has written for and been frequently quoted in The New York Post, The Wall Street Journal, The Washington Times, Time Magazine, Newsweek, Roll Call and virtually every service defense periodical and media network on issues relating to military history and defense policy. He is a graduate of West Point and earned his PhD in history from Duke University.

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Texas Border Security: A Strategic Military Assessment

Barry R. McCaffrey and Robert H. Scales, PhD

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TEXAS BORDER SECURITY: *A STRATEGIC MILITARY ASSESSMENT*

Executive Summary

During the past two years the state of Texas has become increasingly threatened by the spread of Mexican cartel organized crime. The threat reflects a change in the strategic intent of the cartels to move their operations into the United States. In effect, the cartels seek to create a "sanitary zone" inside the Texas border -- one county deep -- that will provide sanctuary from Mexican law enforcement and, at the same time, enable the cartels to transform Texas' border counties into narcotics transshipment points for continued transport and distribution into the continental United States. To achieve their objectives the cartels are relying increasingly on organized gangs to provide expendable and unaccountable manpower to do their dirty work. These gangs are recruited on the streets of Texas cities and inside Texas prisons by top-tier gangs who work in conjunction with the cartels.

Strategic, Operational and Tactical Levels of Conflict

The authors of this report, both retired senior military executives bring more than 80 years of military and governmental service to their perspective on Texas border security viewed in terms of the classic levels of conflict: *strategic*, *operational* and *tactical*.

Strategic

America's fight against narco-terrorism, when viewed at the strategic level, takes on the classic trappings of a real war. Crime, gangs and terrorism have converged in such a way that they form a collective threat to the national security of the United States. America is being assaulted not just from across our southern border but from across the hemisphere and beyond. All of Central and South America have become an interconnected source of violence and terrorism. Drug cartels exploit porous borders using all the traditional elements of military force, including command and control, logistics, intelligence, information operations and the application of increasingly deadly firepower. The intention is to increasingly bring governments at all levels throughout the Americas under the influence of international cartels.

Operational

In the United States the operational level of the campaign against cartel terrorism is manifested at the state. Texas has become critical terrain and operational ground zero in the cartel's effort to expand into the United States. Texas has an expansive border with drug cartels controlling multiple shipping lanes into the state. Texas' location as the geographic center of the U.S. allows for easier distribution of drugs and people. In effect, the fight for control of the border counties along the Rio Grande has become the operational center of gravity for the cartels and federal, state and local forces that oppose them.

Tactical

At the tactical level of war the cartels seek to gain advantage by exploiting the creases between U.S. federal and state border agencies, and the separation that exists between Mexican and American crime-fighting agencies. Border law enforcement and political officials are the tactical focal point. Sadly, the tactical level is poorly resourced and the most vulnerable to corruption by cartels. To win the tactical fight the counties must have augmentation, oversight and close support from operational and strategic forces.

History has shown that a common border offers an enemy sanctuary zone and the opportunity to expand his battlespace in depth and complexity. Our border with Mexico is no exception. Criminality spawned in Mexico is spilling over into the United States. Texas is the tactical close combat zone and frontline in this conflict. Texans have been assaulted by cross-border gangs and narco-terrorist activities. In response, Texas has been the most aggressive and creative in confronting the threat of what has come to be a narco-terrorist military-style campaign being waged against them.

Texas as a Narco-Sanctuary

A successful sanctuary permits insurgents to move freely and operate on whichever side offers greater security. In a curious twist of irony, the more successful the Mexican military becomes in confronting the cartels, the greater likelihood that cartels will take the active fight into Texas as they compete against each other in the battle to control distribution territories and corridors

Federal authorities are reluctant to admit to the increasing cross-border campaign by narco-terrorists. Until lately, denial has been facilitated by a dearth of evidence that an organized and substantial campaign exists inside Texas. Evidence collected for this report, principally

from Texas border counties, reveals a palpable sense of frustration concerning the effectiveness of U.S. federal border operations.

Accounts of this violence, both data driven and anecdotal, compiled by federal agencies, Congressional testimony and the Texas Department of Agriculture underscores the daily activity and constant threat of a larger presence of narco-terrorists than previously thought. The Federal Department of Homeland Security (DHS) does not attribute many narco-crimes to the cartels. Many cross-border crimes are routinely not reported by border farmers and ranchers due to fear of retribution from cartels.

The cartel's foot soldiers who fight the tactical battle in Texas are "transnational gang" members many of whom are drawn from prison gangs such as the Mexican Mafia, Texas Syndicate, Tango Blast, Barrio Azteca and others that formed in U.S. prisons for self-preservation and protection from other gangs. These transnational gangs not only have continued to expand in Texas and the nation but constitute a very tightly knit network of cooperation and connectivity that has been growing between prison gangs and Mexican cartels.

Impact on Texans

Fear and anxiety levels among Texas farmers and ranchers have grown enormously during the past two years. Farmers, ranchers and other citizens in border communities are caught in the crossfire of escalating cross-border violence resulting in large part from conflicts between cartels, paramilitary enforcement groups and transnational gangs struggling for control of key drug and illegal alien smuggling routes into the U.S. from El Paso to Brownsville. Some Texas farmers and ranchers have even abandoned their livelihoods to move their families to safer ground.

Living and conducting business in a Texas border county is tantamount to living in a war zone in which civil authorities, law enforcement agencies as well as citizens are under attack around the clock. The Rio Grande River offers little solace to the echoes of gunshots and explosions. News of shootings, murders, kidnappings, beheadings, mass graves and other acts of violence coming across the border go far beyond any definition of "spillover violence."

Texas Joins the War

Because Texas is the frontline in this conflict and because its citizens and institutions are most affected, the Texas Department of Public Safety (DPS) has developed a comprehensive military-like operational campaign against narco-terrorists. This effort is still growing and changing in response to an adaptive and ruthless enemy that still harbors an intense desire to take its campaign into the United States. Five years of effort to curtail narco-terrorist intrusion has given the Texas DPS and its state and local partners enormous and hard-won experience in the art and science of fighting the southwest border war.

Beginning in 2006, Texas began a series of high-intensity, sequential, short-duration operations that resulted in crime reductions ranging from 25 percent to as high as 75 percent as smuggling operations decreased. Later, the state expanded and lengthened these operations by increasing the patrol presence along the Texas-Mexico border. Governor Perry was able to achieve this expansion of effort by leveraging various discretionary grants to increase local and state patrol capacity along the border through overtime payments and the purchase of communications and surveillance equipment as well as new vehicles and weapons. The governor also committed Texas military forces to support these operations.

To gain support from the citizenry, in 2007 the Texas Legislature created the Border Security Council (BSC) charged with advising the governor regarding the allocation of discretionary state homeland security funds. The BSC held a series of public hearings and received testimony from business owners, law enforcement officers, local elected officials and private citizens and then produced a comprehensive report and recommendations on border security issues for the governor and Texas Legislature.

Organization for Combat

BSOC-UCs/JOICs

The state of Texas organized for combat in a manner familiar to the military by creating six Unified Commands (UCs) each staffed with a Joint Operations and Intelligence Center (JOICs) located principally within Texas cities most threatened by cartel violence. This Texas effort, led by the Texas Rangers, is dependent on a cooperative relationship based not on command authority, but on a shared relationship, trust and commitment to work together.

This cooperative group of players is represented by federal, state, local and military components. The heart and operational engine of the Texas border security effort is located

in Austin within the Border Security Operations Center (BSOC). All unified command and joint players intersect in a single facility administered by the Texas Ranger Division of the DPS. The BSOC collects and shares information from all state, local and federal agencies.

Six years of experience has produced a collaborative interagency network that has grown by establishing trust and confidence among network participants from strategic through tactical. The comity engendered through successful operation allows the BSOC team to chip away at bureaucratic cultures and mindsets. Such experience serves to generate interpersonal incentives and rewards selflessness and a commitment to collaborative behavior.

Years of experimentation and field operations have yielded a wealth of lessons learned as well as new materiel, tactics and doctrine unique to Texas but capable of being shared by other state and federal border security agencies. The BSOC operates using a statewide mapping system that graphically displays and shares with unified commands and federal agencies a crime map that includes all drug, cash and weapons seizures. It fuses information from other state and federal agencies. Texas has developed cheap and effective locally procured wildlife cameras linked to the Internet that are capable of passing images in real time to state authorities.

Texas Rangers Lead the Fight

The first principle of Texas border security operations is to empower local law enforcement. Soldiers often say that bad strategies cannot be salvaged by good tactics--- but bad tactics can defeat a good strategy. This saying simply reinforces the truism that no national strategy that seeks to defeat narco-terrorism can be adequately confronted unless tactical units, such as local police and federal border security stations, are properly staffed, resourced, competent and well-led.

The Texas Rangers lead a cooperative program that brings together a ground, air and marine assault capability. Ranger Reconnaissance Teams are the tactical combat elements in the war against narco-terrorists. Each participating federal, state and local agency voluntarily adds its unique capabilities to the teams. The Texas Highway Patrol acts as an outer perimeter for the Rangers by funneling traffic toward Ranger border positions. Tactical contact teams, deploying along the Rio Grande in small, concealed positions, are able to respond immediately to intelligence from Autonomous Surveillance Platform (ASP) units, DPS and National Guard surveillance helicopters, as well as calls to UCs from local

police or citizens. DPS Dive Teams conduct SONAR scans of the Rio Grande and assist in recovery of vehicles and contraband in splashdown areas.

Resources remain the greatest impediment to the expansion and continued success of the Rangers' border war against the cartels. Budget cuts for DHS, its Federal Emergency Management Agency (FEMA), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA) and the United States Coast Guard USCG) have severely constrained the ability of Texas to rely on its federal partners and their resources to expand border operations.

A Successful System Under Threat

Years of collective effort by Texas law enforcement have yielded a remarkably flexible and efficient system of border protection that involves all levels of command from federal to local. This system is under threat not only by an increasingly ruthless and adaptive enemy but also by an increasingly diminished budget.

Without question, the future success of this effort will depend on the ability of the state of Texas, local and federal agencies to work together to expand their war against intrusion by cartels. The bottom line, however, is that while today Texas is the frontline in this escalating war, the potential consequences of success or failure will affect our entire nation. Thus, it is up to the nation to support Texas in its efforts to defeat this transnational criminal enterprise.

Texas Border Security: A Strategic Military Assessment

Recommendations

Communications and the Network: A truly seamless joint effort between federal, state and local law enforcement cannot occur unless all of the players are connected by an integrated broadband system. Such a system must network all land, air and maritime communications systems. It also must be robust enough to connect the smallest border town police departments (with adequate cyber-security controls) to the most sophisticated national domestic intelligence networks. Only a consortium of federal and state and local resources can make such an expansive effort affordable and successful.

Operations: The success of border operations by the Texas Rangers should serve as a template for the future. Federal border security agencies should continue to support and enhance the current joint operational framework established by the state of Texas and

tactically implemented by the Texas Rangers. Reform at that operational level is dependent on bringing more "boots on the ground" to the fight for border security to include a greater participation by the National Guard under state control. All agencies involved should develop a framework and establish an alliance for integrated cross border planning, intelligence sharing, communications and synchronized operations. Such an effort must include all legal, procedural and policy changes necessary to break down bureaucratic, cultural and mind-set barriers that currently exist between front line local, state and federal participants.

Intelligence: Reform of the border security intelligence system must begin with more sophisticated cross-border technical and human intelligence collection about the enemy coupled with the ability to offer a clearer digital picture of the battlefield to border tactical forces. Key to this effort must be a quantum improvement in the ability of the federal intelligence agencies to gather, analyze and disseminate actionable intelligence and information in real time with state and local law enforcement. Federal support is also needed to accelerate enhancement of the Department of Public Safety's TxMAP system for Intelligence mapping and data base support.

Technology: The state of Texas should develop a plan for Federal funding and participation in a "Joint Technology Development Center." The creation of a joint Federal and state "skunk works" effort would combine federal financial and scientific research assets with the proven success of Texas' efforts to apply off the shelf technologies to winning the battle for border security. Such an effort would focus on technologies to detect, track, assess, classify, interdict and prosecute criminals along the Southwest border region. Technological areas with the most promise include meshing networks, low cost un-manned ground sensors, ground surveillance radars, remote cameras, aerial platforms, thermal and night vision capabilities, command and control facilities, state of the art weapons and sighting systems as well as identification systems connected to dynamic and inclusive data bases.

Learning: No amount of well-intended effort will completely eliminate the natural operational friction that exists between disparate federal, state and local agencies confronting these lethal and well-resourced Mexican criminal cartels. Decades of experience in fighting our nation's foreign wars have shown time and again that reducing operational friction can best be achieved by a system that enhances shared awareness and mutual understanding. To this end, Texas should establish an effort that teaches all participants "how Texas border operations work." The Texas effort would be based on proven joint military programs. The Texas and federal partners must bring together all

participants into a single in-resident and virtual classroom to learn the detailed procedures, statutes, organizations, doctrine, tactical methods and rules of engagement. Faculty and funding would be shared by experienced operators from all levels of law enforcement, federal to local.

Texas Border Security: A Strategic Military Assessment

Barry R. McCaffrey
Robert H. Scales, PhD

"We are in a war. We are in a war and I'm not going to sugar coat it by any means. We are in a war and it is what it is." -- Arthur Barrera, Texas Ranger

I. PURPOSE

A: The Task

In June 2011, Texas Department of Agriculture Commissioner Todd Staples requested that two senior military officers, Gen. Barry McCaffrey (Ret.) and Gen. Robert Scales (Ret.), develop and recommend a military-style strategy and operational and tactical requirements to secure the Texas portion of the U.S.-Mexico border. He also requested specific information related to the financial, manpower, technology and other resources needed to secure the Texas-Mexico border; and ways in which the roles and resources of U.S. federal agencies could be optimally deployed to facilitate implementation of these recommendations.

B: The Approach

This paper will delineate the terrorist template in order to highlight the magnitude and dynamics of the growth of lawlessness in Mexico and the threats the drug cartels pose to the people of Texas; and to focus attention on the success of a Texas-led effort to take back our nation's southwest border. The paper will then describe efforts made by U.S Federal and Texas law enforcement agencies to confront this growing threat. The intent is to use Texas as a model for a nationwide campaign that will stem the cross-border intrusion of these dangerous and insidious criminal groups.

It will give cost-effective, evidence-based solutions for the future with the aspiration that defending our Southwest border will become a priority for the nation.

C: The Bottom Line: Mexican Cartels Seek to Create a "Sanitary Zone" Inside the United States

This paper will be the first to conclude that the cartels are following a twofold strategic plan:

1. First, to create a "sanitary zone" inside the Texas border -- one county deep -- that will provide sanctuary from Mexican law enforcement and, at the same time, enable the cartels to transform Texas' border counties into narcotics transshipment points for continued transport and distribution into the continental United States.

2. Second, to increasingly rely on organized gangs to provide expendable and unaccountable manpower to do their dirty work inside Texas and elsewhere in the country. These gangs are recruited on the streets of Texas cities and inside Texas prisons by top-tier gangs who work in conjunction with the cartels.

II: A Military Perspective

Senior military leaders customarily analyze conflicts such as these from the three levels of war: strategic, operational and tactical. This construct applies to all forms of human conflict, including narco-terrorism. The authors will therefore exploit the classic three levels of war as a template for viewing the Texas border security challenge.

A: Strategic

From the view of international crime and conflict, America's fight against narco-terrorism, when viewed at the strategic level, takes on the classic trappings of a real war. Crime, gangs and terrorism have converged in such a way that they form a collective threat to the national security of the United States. As Robert Killebrew writes in his superb study" Crime Wars":

> *"Crime, terrorism, and insurgency are interwoven in new and dangerous ways that threaten not just the welfare but also the security of societies in the Western Hemisphere. Scale and capability have made the cartels an insurgent threat as well as a criminal one."*

To make the case that narco-terrorism crosses the line from crime to war at the strategic level demands that the threat must extend beyond our border. Clearly, America is being assaulted not just from across our southern border but from across the hemisphere and

beyond. All of Central and South America have become an interconnected source of crime, violence and terrorism. Drug cartels exploit porous borders using all the traditional elements of military force, including command and control, logistics, intelligence, information operations and the application of increasingly deadly firepower. The intent is to increasingly bring governments at all levels throughout the Americas under the influence of international cartels.

Today's crime wars and narco-terrorism affect the national security situation and policies of nation states from Bolivia to Columbia, Guatemala, Mexico and the United States. Local law enforcement simply are not equipped to prosecute these wars. We must now begin to collect the level of force protection traditionally used in classic warfare if we are to match and eventually defeat increasingly effective strategic forces of cartels, gangs and the corrupt national level forces that protect them.

B: Operational

In the United States the operational level of the campaign against cartel terrorism is manifested at the state level. Operational campaigns and major operations are planned, conducted and sustained to accomplish strategic objectives within theaters or areas of operations. The four border states (California, Arizona, New Mexico and Texas) are the operational center of gravity and the point of conflict through which the U.S. federal agencies implement national anti-drug strategy as outlined by the commander-in-chief.

State territory gives cartels the operational depth they need to translate cross-border tactical success into their strategic objective of profiting from the distribution of narcotics throughout our country. Exploiting the internal workings of state affairs and occupying state terrain gives the cartels depth to maneuver and the ability to extend their battlespace into secure regions beyond the reach of an expanding Mexican domestic anti-cartel campaign. Among the four border states, Texas has become critical terrain and operational ground zero in the cartel's effort to expand into the United States. Texas has an expansive border with drug cartels controlling multiple shipping lanes into the state. Texas' location as the geographic center of the U.S. allows for easier distribution of drugs and people.

C: Tactical

As we have seen in Iraq, Afghanistan and elsewhere, wars are won or lost at the tactical level. The narco-terrorist war is no different. The tactical level of war is where enemies collide in the close fight. At the tactical level the cartels seek to gain advantage by exploiting the creases between U.S. federal and state border agencies, and the separation that exists

between Mexican and American crime-fighting agencies. Border law enforcement and political officials are the tactical focus point. Sadly, the tactical level is poorly resourced and is the most vulnerable to corruption by cartels. To win the tactical fight the counties must have augmentation, oversight and close support from operational and strategic forces.

III. BACKGROUND

A: Mexico: Our Vulnerable Center of Gravity

America's hunger for illicit drugs and the Mexican criminal structure to supply them have created an internal war in Mexico that has stripped that country of its internal security to the extent that a virtual state of siege now exists adjacent to our own southwestern states. The Mexican people are sad inheritors of tragic conditions spawned by this incipient war, including over 40,000 murdered, many thousands kidnapped, commerce diminished, and civil society in Mexico's northern states severely deteriorated. The terror inflicted on the Mexican people can no longer be characterized as mere wanton criminality. Conditions in Mexico have become so horrific as to approach a civil war, driven by terrorists motivated by profit and greed rather than ideology or radical religion. Conditions in Mexico are akin to the beginnings of a terrorist failed state, and the impact of these conditions on the state of Texas and its citizens is both dramatic and far-reaching.

Texas Department of Public Safety Director Steven McCraw has testified to the fact that over the last 18 months, six of seven cartels have established command and control facilities in Texas cities that rival even the most sophisticated battalion or brigade level combat headquarters. Texas has suffered 22 murders, 24 assaults, 15 shootings and five kidnappings related to the cartels. A troubling and insidious threat is the use of criminal gangs by the cartels, particularly along southwestern border counties that have less than 10 percent of the population, but account for almost 20 percent of juvenile gang-related crimes. Within the last year, the number of Texas prison gangs that work directly with the Mexican cartels has increased from four to 12.

The long-term effect on the public safety of Texans is profound in that almost two-thirds of criminal activity in Texas is gang-related. The cartels are beginning to make a significant investment in future gang activity by recruiting school-age children to support cartel enterprises.

1. **From Local to Transnational Gangs:** The cartel's intrusion inside the United States is tied to dozens of transnational gangs trained by the cartels and operating as agents in the metropolitan areas, cities, suburbs and towns of Texas. Collectively they

constitute a vast network of satellite criminal business enterprises that act as the marketing, enforcement, contraband distribution and money-laundering network for the cartels. Cartel-gang alliances have been developed within Texas prisons and these associations are growing. Likewise, regional alliances exist between specific gangs and specific cartels. Because minors are exempt from the full force of prosecution, cartels and gangs use juveniles for smuggling, cross-border scouting, in-school recruiting, drug sales and, sadly, even assassinations. The two biggest gang organizations in Texas, the Mexican Mafia and the Texas Syndicate, work as "subcontractors" for Mexican cartels both to enforce narco-trafficking and to transport drugs on U.S. soil.

2. **Increasing Cooperation Among Gangs:** Many "transnational gang" members come to the United States from Central American gangs formed in part by refugees who fled the wars in El Salvador, Nicaragua and Honduras in the 1980s and were deported back to their home countries. These gangs not only have continued to expand in Texas but constitute a very tightly knit network of cooperation and connectivity that has been growing between prison gangs and Mexican cartels. Consensus among police departments suggests that gangs are growing in strength as well as numbers in Texas cities and suburbs. The Houston area and its suburbs, for example, are home to far more gang members than anywhere else in Texas. There are at least 225 documented gangs in the Houston area and surrounding counties with more than 10,000 "documented" members. Gang members have been arrested for home invasions, robbery, kidnapping, murder, extortion, money laundering and drug trafficking. About half of gang members arrested involve drug charges, many at the wholesale level.

3. **Transnational Shipments of Arms as Well as Drugs:** Between $19 billion and $39 billion in illicit proceeds move though southwestern border "bulk smuggling" operations to Mexico each year. Illegal firearms accompany bulk cash shipments across the nation, through Texas to the southwestern border. Between FY2005 and FY2010, ATF investigations led to the seizure of over 8,700 guns and the indictment of 1,705 defendants, of whom 1,170 were convicted.

B: Central and South America's Drug Trafficking Crisis

Today's crime wars and narco-terrorism affect the national security situation and policies of nation states from Bolivia to Columbia, Brazil, Venezuela, Argentina, Chile, Peru, Ecuador, Guatemala, Nicaragua, El Salvador, Mexico and the United States. Thanks to the American

and European thirst for narcotics, virtually all Central and South America states are experiencing an increase in transnational cartel activity.

Narcotics-related homicide rates have gone up in every country in the region, in some cases dramatically. The northern half of the Isthmus, comprising Guatemala, Honduras and El Salvador, is now the most violent region in the world. Formerly "safe" countries such as Costa Rica and Panama have seen their crime rates related to narcotics increase sharply in the past five years. Border security pressures along the Texas border cast a long shadow much farther south. Murders proliferating in Guatemala, for example, are directly related to drug trafficking. Today, more than one-third of Guatemala is under effective control of criminal narcotics organizations.

Mexico might have shared the fate of other states collapsed through terrorism had it not been for the resolve of President Calderón and his military, and for support given to the Mexican government. U.S. federal agencies have made progress in confronting the narco-terrorist threat through the Mérida Initiative. The rise of extreme violence on our southern border has convinced both the Bush and Obama administrations to increase the U.S. federal presence along the border. The number of DEA and Border Patrol manpower has grown since the start of the narco-wars. Likewise, the military has found a useful role in backstopping civilian border forces and on occasion adding military unique tactical technologies to the border war.

1. **Mérida Initiative and Other Assistance Programs:** In recent years, U.S.-Mexican relations have grown stronger as the two countries have worked together to combat drug trafficking and secure their shared border; however, tensions have intermittently emerged in this bilateral relationship. The cornerstone of this partnership is the Mérida Initiative, which this year includes over $200 million in assistance.

    a. Throughout 2009 and 2010, President Calderón and U.S. political leaders have begun to implement a new strategy for the Mérida Initiative focused on combating organized criminal groups trafficking drugs into the United States and illicit weapons and cash into Mexico.

    b. The Mérida Initiative expanded bilateral and regional cooperation to combat organized crime and criminal gangs and to maximize the effectiveness of efforts against drug, human and weapons trafficking, including judicial reform, institution building, anti-corruption and rule of law activities. To date, the U.S. Congress has appropriated a total of $1.5 billion for Mexico under the Mérida Initiative. The Mérida Initiative also includes about $300

million in equipment, including three UH-60 and eight Bell 412 helicopters. More than 6,800 federal police investigators, 1,800 penitentiary staff and 4,300 judicial sector personnel have participated in U.S.-funded training events.

c. Overseen by the U.S. Northern Command (NORTHCOM), Department of Defense (DOD) can provide counterdrug assistance under certain circumstances. DOD counternarcotics support to Mexico totaled roughly $200 million in FY2009-FY2011. DOD will use about $50 million in FY2011 to improve security along the Mexico-Guatemala-Belize border. DOD support to Mexico in FY2012 may exceed $75 million.

In spite of these efforts, Mexico remains the principal source of our vulnerability to narco- terrorism at the strategic level of war; and Texas is the state most vulnerable to the spread of instability and violence in Mexico. The "ground truth" of the war against the cartels on the Mexican side is well known: tens of thousands of murders and kidnappings as the cartels fight for control of cross-border movement of drugs and people to the north, and weapons and cash to the south. Narco-terrorists have forced capitulation of certain border cities and towns in order to claim territory for unimpeded transshipment of drugs, which has eroded legitimate commerce as several towns have emptied.

A perspective on the threat to Mexico from a senior Mexican official, Alejandro Poiré, spokesman for Mexico's National Security Strategy Council, reveals the extent of the Mexican view of the cartel threat. Poiré said that President Calderon is opposed to legalizing drugs as a solution to the violence in Mexico. Most importantly, because of the way in which drug cartels have diversified their criminal activities, he stated further that "the security issue in Mexico is way beyond drug trafficking." In effect Poiré concluded that cartels are fighting on two fronts: for control of border smuggling corridors and for control of drug distribution networks in the United States.

IV: BEYOND SPECULATION – CARTEL ACTIVITY IN TEXAS

Such violence driven by internal terrorism cannot remain isolated within one nation for very long. History has shown that a common border offers an enemy sanctuary zone and the opportunity to expand his strategic battlespace in depth and complexity. Our border with Mexico is no exception. Criminality spawned in Mexico is spilling over into the United States. Rival gangs affiliated with the Mexican cartels control the drug trade in over 300 American cities and towns, according to the FBI. According to the Justice Department's National Youth Gang Center, since 1980 the growth of gangs in the United States has been incredibly rapid, from an estimated 286 jurisdictions, which reported the presence of

approximately 2,000 gangs made up of nearly 100,000 members in 1980 to over 30,000 gangs with more than 1 million members in 2011.

About 25 percent of the federal prison population in 2010 was comprised of 55,000 foreign nationals. Their numbers are growing. State and local correctional systems that applied for payments under the federal State Criminal Alien Assistance Program (SCAAP) in 2009 reported 296,000 illegal aliens who were jailed at least four days for a felony or two misdemeanors. The average incarcerated alien had seven arrests and committed an average of 12 offenses. Twenty-five percent of the aliens had 16 or more offenses.

In 2009 the Federal government spent about $1.3 billion for the incarceration of aliens in the federal Bureau of Prisons system. Another $323 million went for payments to states and localities as partial reimbursement for their costs. States and localities are incurring significant additional costs to incarcerate illegal aliens, since the SCAAP payments cover only a small fraction of the total cost. Texas spends $13.5 million each month just for holding illegal immigrants who are either serving their sentences or awaiting deportation. An estimated 9,000 illegal immigrants are in Texas Department of Criminal Justice custody.

A: Focus on Texas

As in any trans-border conflict, violence is most pronounced at the international point of intersection. Four American states are most affected by this spreading and insidious conflict. This study focuses on Texas because it is the frontline in this conflict and because its citizens and institutions are most affected. Texas shares the longest border with Mexico. Texans have been the first to be assaulted by cross-border gangs and narco-terrorist activities. And, perhaps most importantly, among all border states, Texas has been the most aggressive and creative in confronting the threat of what has come to be a narco-terrorist military-style campaign being waged against them.

B: Beyond the U.S./Mexico Border

The problem with success so far is the assumption that while the economic, financial and social consequences of narco-terrorism has spread to all of the United States, the "war" as an active enterprise ends at the border. This may have been true in the past, but it most certainly is not true today. The reasons are many:

1. The spillover effect of increased violence in Mexico increases the violence on the U.S. side. But over the past two years, the war has intensified on our side due to the intentional design by warring cartels. Virtually every successful insurgency profits

from sanctuary across an international border. The North Koreans had China; The North Vietnamese Army had the Ho Chi Minh Trail along the border with Laos; and the Taliban winters in comfort in the Pashtun regions of Pakistan.

2. A successful sanctuary permits insurgents to move freely and operate on whichever side offers greater security. The narco-terrorist follows the same pattern of behavior where the most lucrative and safer sanctuary lies north of the border. In a curious twist of irony, the more successful the Mexican military becomes in confronting the cartels, the more likely the cartels will take the active fight into the United States as they compete against each other in the battle to control distribution corridors inside Texas.

3. Federal authorities are reluctant to admit to the increasing cross-border campaign by narco-terrorists. Until lately, denial has been facilitated by a dearth of evidence that an organized and substantial campaign exists inside Texas. Evidence collected for this report, principally from Texas border counties, reveals a palpable sense of frustration concerning the effectiveness of U.S. federal border operations. Accounts of this violence, which have been documented by numerous federal agencies, Congressional testimony and the Texas Department of Agriculture underscore the daily activity and constant threat of a larger presence of narco-terrorists than previously thought. The FBI does not differentiate between everyday or "drug-related" homicides, robberies, aggravated assaults, sexual assaults and motor vehicle thefts. They admit that their data for kidnapping, extortion, money laundering, bribery, coercion of public servants, organized crime, arson, fraud, perjury, trespassing, property destruction, weapons offenses, terrorist threat and trafficking of persons are not included in the FBI Uniformed Crime Report as being "drug- or gang-related" crimes. Therefore the collected data is always missing a critical element that would provide fidelity to the actual impact of drug- or gang-related offenses. One reason for this disparity between reported and actual cartel activity in Texas is that the 17,000 local and state law enforcement agencies that provide data to the UCR are not required to categorize these crimes as "drug-related."

C: Cartel Violations of Texas Sovereignty

Farmers and ranchers whose families have spent generations on the Texas side of the border reflect on how the character and intent of border crossing immigrants have changed over the past three years. They now see most of the intruders on their land as men tattooed

with the marks of cartels, gangs and in some cases Hezbollah members. They are confronted often with border-crossers who demand to use their phones or trucks. Texas homes are now surrounded by strangers who harass the owners until they concede their land for use by the cartels. Farmers refuse to travel at night.

About 75 miles from the Mexican border, Brooks County is not a border county but it contains the Falfurrias Border Patrol checkpoint. Smugglers constantly try to get around that checkpoint and evade local law enforcement. Illegal immigrants from Mexico, Central and South America, Pakistan, India, Africa, China and elsewhere turn up day and night. Rival gangs fight for valuable Brooks County territory to smuggle and also to steal oil from the oil fields and tap pipelines. Decaying human remains litter the landscape. The cost of autopsies and burials of illegal immigrants and the medical treatment of smuggling survivors drain the County's meager budget.

Smugglers regularly cross ranches to move their loads around the checkpoint, cutting fences, breaking water lines and sometimes stealing vehicles. Encounters by ranchers with groups of menacing strangers are commonplace. The situation is so bad that owners of a ranch in Brooks County packed up and left their 38,000 acre ranch because the area has become, as they described it, a war zone. Their home had been broken into, their land littered with garbage and the distinct sounds of gunfire could be heard from their front porch day and night. The ranch runs alongside Farm Road 755 which law enforcement calls a "main smuggling corridor" for the cartels.

Cartels proudly boast they have established training camps inside Texas. They have taken control of urban gangs and now use them like retail franchises to distribute drugs, launder money and arrange for the southward export of deadly firearms. Ranchers may not say much to the media for fear of reprisal or retaliation by the cartels. But they do talk to each other, every day, about what they see, hear and experience. They also have expressed their thoughts and feelings to the Texas Department of Agriculture, which has publicly documented many of those stories at www.ProtectYourTexasBorder.com.

One rancher observed:

> *"But the Border Patrol, I could tell you that their hands are tied about a lot of stuff. They have to call Washington; even if they are having a gunfight down at the river, they are on the phone. They have to call Washington. The border patrol have boats on the river. They patrol the river. They are not allowed to pick up anybody that's in the water unless they are dead. If there's drug guys laading drugs, all they have to do*

is step out and wade out in the water and Border Patrol can't touch them. They are not allowed to go into the water... and they can't do anything about it."

A consensus has emerged among both citizens and state border officials that they believe U.S. federal agencies too often define their way out of the problem. As a consequence, extortions, violence and cartel corruptions of local officials are not routinely reported. Another factor revealed in testimonials by citizens living and earning their livings on the border strongly suggests that intimidation by cartels also is taking its toll on the reporting of border incidents. As one farmer noted:

"We see a lot of things, but we keep our mouths shut about it. We just don't want to be on anybody's hit list. I keep to myself. The people that are doing what they're doing they keep to themselves. If I see something, I ignore it. I look the other way, but there is a problem. It's really bad. Here an the river, you see a lot of stuff and you don't pay attention to it. You walk away. You try to stay in an area where they see you, so if somebody gets caught, they don't say, 'Well they called somebody.' You know, just try to blend in and not create any waves."

D: Beyond Crime: The Impact of Cartel Control of the SW Border Counties

The drug cartels and their criminal elements realize the value in exploiting small communities along the border for storing and breaking down large narcotic loads for further distribution and transportation. The cartels realize that Texas is a big state with limited law enforcement resources to cover vast rural areas. They take advantage of gaps in manpower and response times to push narcotics northward along established smuggling routes such as U.S. 83, U.S. 281, U.S. 77 and the interstate highway system. Narco-terrorist organizations employ a well-organized cadre of "scouts" who use sophisticated communication and observations techniques, encrypted radios and advanced optics to conduct their clandestine surveillance centered principally in the most vulnerable southwestern border counties. These scouts have armed themselves with automatic weapons and have demonstrated an increasing level of willingness to use them against local law enforcement.

Recent intelligence has revealed that criminal organizations, probably working for Los Zetas and the Gulf Cartel, had a strong foothold in Hidalgo County. The Hidalgo County, Sullivan City Police Chief Hernan Guerra was convicted for conspiracy with intent to distribute narcotics and for helping traffickers cross the border. Guerra along with members of Mexican drug cartel cells operating in Houston, El Paso, Corpus Christi and McAllen were among 429 accused traffickers arrested as part of a nationwide sweep in 2010. The seriousness of cartel intrusion into the Southern District of Texas was highlighted by the indictment of 58 people and the seizure of 31,000 pounds of marijuana; 1,300 pounds of

cocaine and an assortment of real estate as well as bank accounts. Subsequent investigations reveal that at least 70 residential lots in Hidalgo County had been purchased with millions of dollars in drug proceeds. In the U.S. Courts, Western District of Texas, which includes San Antonio and El Paso, 69 people were arrested, many with ties to the Juarez cartel.

Border farmers and ranchers suffer economically from cartel violence on both sides of the border. Cartel intrusion into commerce has affected Texas businessmen and farmers:

> *"Three men approached one of our excavator operators and asked him what he was doing. He said 'Well, I'm doing my job,' and they said, 'Well, we need you to cease excavating, stop clearing the trees and please move off.' They said 'OK', and they said, 'We'll be back in about four hours and you need to stop and be gone. And if you're not gone, then we'll deal with you then.' It's a big concern for me because I've got three employees who work down there (along the river) and I'm worried about the employees. I don't want them to get hurt, injured or even killed."*

As a result of escalating violence, border residents, sadly, are being forced to leave their farms, some of which have been in families for generations:

> *"After so many years, it's upsetting, but either you move on or you know it's dangerous for your family so I didn't want to put them through that, and we just we just moved on from farming. It's not a good feeling, when you've been doing something all of your life and then you have to change from there to now I'm behind a desk, my hands are so slick that uh I'm not used to that. It's something very different. I'm used to getting on the tractor, harvesting and you know getting all greased up. It's just a different feelings most definitely. They are controlling the farmers in the area and it's really getting very sad."*

Perhaps the least reported aspect of cartel intrusion into the state is the psychological impact of increasingly open and brazen activities along the border. Two years ago cartel agents inside Texas conducted their criminal activities covertly seeking as much as possible not to bring attention and create an atmosphere harmful to their financial successes. Today cartels' brazenness has opened a new chapter in their activities, suggesting that they no longer fear public exposé. Cartels emblazon their vehicles with marks like large "Z"s or the Ferrari emblem to symbolize their affiliation to their individual cartels. Cartel hit squads have been known to wear uniforms. City gangs no longer hide their franchise activities from police. Ranchers and farmers increasingly find cartel members on their doorstep. When

crossing borders, cartel agents used to avoid local, state and federal border authorities. Today these criminals are willing to confront and sometimes fight openly, ignoring public outrage inside the state. These disturbing events have not only damaged the prosperity of southwestern border counties and cities, they also have had a detrimental impact on the morale of citizens, some of whom have farmed and ranched on the border for generations. Their sentiments reflect that this is not the traditional way of life along the border. It is, in fact a new and heightened level of unease, tension and fear.

As one long term rancher notes:

> *"When I get up in the morning and step out the door, I'm looking for rattlesnakes and illegals, and I'm packing my gun and my cell phone. When I go down to feed my horses, I have my dog, my pistol and the cell phone. You just have to stay aware. Several months ago, I walked in my tack room and my two big dogs went ballistic, and there were two illegal aliens there. I get more angry than scared because you cannot be scared. You're just going to have to pull your socks up and just get after it and I've got border patrol on speed dial."*

V: TEXAS – THE DECISION POINT

The cartels' encroachment will exploit the tactical-operational divide along the Texas border in order to extend their controlled territory by about 100 miles inside Texas. The emerging tactical fight to push the cartels back across the border will have enormous strategic consequences for both the United States and Mexico. In effect, Texas has become the cartel's decisive point in their concept of future operations.

A: Decision Point

At the operational level of war, a decision point is a place that allows a commander to gain a marked advantage over an enemy and greatly influence the outcome of the operation. The sanctuary offered by an insecure border offers the cartels potential territory for continued criminal prosperity in the face of a less secure Mexico. It also provides the cartels with a preferred point of decision. Texas law enforcement officials led by Department of Public Safety Director, Steven McCraw, have committed themselves in conjunction with local law enforcement partners to preventing the enemy from establishing a sanitary tactical zone inside Texas.

B: Why Texas? Texas is preferred by the cartels because the state offers the greatest operational reach inside the U.S. and the deepest penetration into the greater American

drug market. The ever-expanding tentacles of drug-related crime are becoming very worrisome in Texas. Two south Texas sheriffs and 70 Customs and Border Patrol officials have been convicted for cartel-related corruption. This is an injustice that dishonors the thousands of law enforcement officers who take pride in their oaths to protect and defend. The cartels have expanded their criminal presence in Texas through human trafficking, kidnapping and other human- related crimes.

1. **Kidnappings**: According to DPS Director McCraw, the FBI in San Antonio reported that there have been 266 kidnappings since 2004, 14 reported in 2004, and 58 in 2009. Kidnappings include Americans kidnapped in Mexico, victims abducted in Texas and taken to Mexico and victims kidnapped in Texas by subjects from Mexico.

2. **Narcotics Seizures**: The depth of penetration inside Texas by the cartels can be measured by the enormous increase in narcotics seizures along the major highways from the Rio Grande to all neighboring states: methamphetamines, 135%; heroin, 2,500%; marijuana, 124%; and cocaine, 24%. Cartel importation of the profits of crime passing south through Texas includes a 168% increase in bulk cash and a 154% increase in weapons seized or purchased in the United States.

3. **Human Smuggling**: The human smuggling of undocumented aliens from Mexico, Central and South America across the southwest Texas border captures much attention from the public and the media. Three-quarters of all aliens who come into the U.S. from terrorist countries, mostly the Middle East, are captured in Texas along the U.S.-Mexico border. These are called "undocumented referrals" from "special-interest countries" such as Afghanistan, Iran, Iraq, Pakistan and India. Somali intruders pose a particularly troublesome challenge for Texas law enforcement because they often claim political asylum when apprehended and too often are released into the general population without proper vetting. Global intrusions are merely another source of revenue for the cartels that collect fees from smuggling organizations for their use of cartel-controlled human smuggling routes. But these very special human cargoes are a particularly worrisome and serious threat that may well translate into a tragic, large-scale attack against American territory in the future.

C: The Economic Impact of Cartel Penetration

1. **Growing Threat to Agriculture:** It is very clear from Texas Department of Public Safety (DPS) and Texas Department of Agriculture (TDA) data that fear and anxiety levels among Texas farmers and ranchers have grown enormously during the past two years. Farmers, ranchers and other citizens in border communities are caught in the crossfire of escalating cross-border violence resulting in large part from conflicts between cartels, paramilitary enforcement groups and transnational gangs struggling for control of key drug and illegal alien smuggling routes into the U.S. from El Paso to Brownsville. Some Texas farmers and ranchers have even abandoned their livelihoods to move their families to safer ground.

2. **Increased Danger to Texans:** Conditions within these border communities along both sides of the Texas-Mexico border are tantamount to living in a war zone in which civil authorities, law enforcement agencies as well as citizens are under attack around the clock. The river offers little solace to the echoes of gunshots and explosions. Customs and Border Protection (CPB) Deputy Commissioner David Aguilar admitted that the cartels control "several areas along our border with Mexico," In fact he noted that "the cartels are turning into more of a Mafia-like organization that are specializing not just in one crime, not in the singular fashion."

3. **Increasing Demand for State Services by Refugees:** In addition to gun battles and other violence at ports of entry, southwestern border communities have been subject at times to the massive influx of evacuees and casualties from Mexico – a mix of innocent civilians as well as criminals – all of whom may be fleeing violence. Such massive spillover overloads the Texas system of local justice and transports innocent victims of border violence to under-funded medical facilities along the border.

American institutions are a long way from being threatened fundamentally by narco-terrorists operating from Mexican sanctuaries. But the experience of Texas in particular provides compelling evidence of the dangers the nation faces from this spreading contagion. Border security is not a border state problem, but a national one that requires national attention.

VI: TEXAS & FEDERAL AGENCIES:

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SOLVING BORDER SECURITY PROBLEMS TOGETHER

A: A Common Approach

From their study and past experience, Gen. McCaffrey and Gen. Scales concur that both state and federal agencies agree on a similar operational and tactical approach to cripple transnational crime organizations:

1. First and foremost, both entities agree the strategic challenge is bigger than Texas, or even the United States for that matter. A federal comprehensive strategy is needed to deny cartels the ability to operate not only within the border region, but throughout Mexico, Central and northern South America.

2. The operational center of gravity for this enterprise must be the enemy's leadership. Texas and federal agencies must make a sustained effort to identify, investigate, apprehend, prosecute and eliminate cartel leadership in the U.S. and south of the U.S.-Mexico border.

3. As with any offensive operation, the shortest path to the destruction of the enemy's leadership is to attack his command and control structures, communications, transportation and logistics operations from South to Central America, through Mexico and well into the continental United States.

4. The enemy's greatest strength is his wealth. Thus, a second essential line of operations is to diminish and undermine the cartel's financial and economic power by attacking all components of his financial and economic structure.

5. The top six cartels are a legitimate threat to national security and should be placed on the Foreign Terrorist Organizations List.

B: Obstacles to be Overcome

This rock solid Federal-Texas border security relationship is impeded by two essential problems:

1. Federal agencies must do more to remove bureaucratic, organizational, cultural and mindset barriers that impede full cooperation and collaboration, from information collection and sharing to joint action.

2. A strategic vision is needed to solidify Mexico's and our Central American allies' fight with the drug cartels.

C: A Commitment to Cooperation

The Department of Homeland Security (DHS), Department of Justice (DOJ) and all other U.S. federal agencies, together with DPS, other Texas state agencies and local law enforcement agencies (LEAs) are fully engaged in fighting threats from cartels along the southwest border and are collectively committed to:

1. Enhancing information sharing and coordination of intelligence collection, analysis and dissemination.
2. Expanding the scope, quality and timeliness of actionable information and intelligence shared among partners.
3. Employing enhanced technology and training to support interdiction efforts.
4. Improving technology to screen vehicles and cargo, the use of cameras for surveillance, license plate readers at POEs and elsewhere, and biometric identification systems.
5. Increasing cooperation with Mexican counterparts.
6. Working on law enforcement and prosecutorial cooperation on both sides of the border.
7. Stemming the southbound flow of cash out of the U.S. into Mexico and countering all forms of money laundering.
8. Interdicting illegal weapons shipments destined for Mexico.
9. Working to strengthen domestic coordination and cooperation on both money laundering and weapons investigations.

D: The Texas Campaign

Texas DPS along with its state and law enforcement partners is committed to disrupting and dismantling drug, cash, arms and human smuggling organizations operating along the southwest border. Even with its current financial and resource limitations, the Texas border security campaign plan includes all of the essential ingredients for success on the border and within Texas. However, sufficient financial resources are lacking to implement a sustainable operation across all the key border security campaign targets discussed in this report.

Effective planning and implementation of an intelligence-driven border security campaign by Texas no doubt can have a significant impact on the operation of cartel and transnational criminal enterprises. But that is not sufficient. The U.S. and Texas must increase their day-to-day and longer-term cooperation with Mexican counterparts through increased information sharing. The U.S. federal government has to take the leadership role by:

1. Broadening the presence and function of U.S. law enforcement liaisons in Mexico;

2. Increasing judicial cooperation with Mexico.
3. Enhancing cooperation with the Mexican government's financial intelligence unit.
4. Expanding bi-lateral efforts to stem the flow of drugs, money and weapons across the shared border.

VII: THE TEXAS EXPERIMENT – HOW IT WORKS

The Texas Department of Public Safety has developed a comprehensive military-like operational campaign against narco-terrorists. This effort is still growing and changing to respond to an adaptive and ruthless enemy that still harbors an intense desire to take its campaign into the United States. Five years of effort to curtail narco-terrorist intrusion has given the Texas DPS and state and local partners enormous and hard-won experience in the art and science of fighting the border war.

What Texas has accomplished provides insights into how the war against this insidious and dangerous enemy can be exploited at the national strategic level. This effort began in earnest with the Border Security Strategy and Operations Plan written at the direction of Governor Perry in 2006. The governor set forth a four-part plan to increase border security and reduce all crime in Texas border counties.

The initial border strategy framework included a substantial increase in local and state law enforcement patrols made possible by a creative program that brought together tactical (local), operational (state) and strategic (national) forces under a state-led coordinated arrangement. This ad hoc partnership allowed for centralized coordination of patrol operations without interfering with the sovereignty of federal and the autonomy of local border enforcement agencies. Centralized coordination and planning opened the door to the creation of an intelligence scheme to drive border operations. A single effort permitted all three levels to combine many disparate border surveillance ideas and technologies together into a single inclusive program.

Beginning in 2006, Texas began a series of high-intensity, sequential, short-duration operations that resulted in crime reductions ranging from 25 percent to as high as 75 percent as smuggling operations decreased. Later, the state expanded and lengthened these operations by increasing the patrol presence along the Texas-Mexico border. Governor Perry was able to achieve this expansion of effort by leveraging various discretionary grants to increase local and state patrol capacity along the border through overtime payments and the purchase of communications and surveillance equipment as

well as new vehicles and weapons. The governor also committed Texas military forces to support these operations.

A: The Texas Border Security Campaign Plan (2009-2011)

Experience gained during the first three years provided the expertise necessary to draft the first Border Security Campaign plan completed in November 2009. The plan was the first and most inclusive operational level plan to counter crime along the Texas-Mexico border, in transit corridors and urban areas. In 2009, the Texas State Legislature allocated $110 million for border security plus $24 million to combat transnational gang activity across the state. The infusion of these funds has allowed the plan to be largely implemented through DPS's Operation BORDER STAR and other initiatives. Between 2009 and 2011, the state expanded the geographical focus of Texas border security operations to include the support of interdiction operations along major transit corridors throughout Texas to counter increasing illicit gangs, firearms and motor vehicle theft in major metropolitan such as Houston, Dallas-Fort Worth, Austin, San Antonio and Amarillo.

B: Border Security Council

One very important lesson learned during the formative period of this effort was the need to inform citizens and expand oversight of the program statewide. To achieve this goal, in 2007 the Texas Legislature created the Border Security Council (BSC) charged with advising the governor regarding the allocation of discretionary state homeland security funds. The BSC held a series of five public hearings and received testimony from business owners, law enforcement officers, local elected officials and private citizens. The Council held public hearings in McAllen, Laredo, El Paso, San Antonio, Austin and Corpus Christi. The Council's findings were as consistent as they were insistent. The citizenry demanded funding for additional local law enforcement officers. They counseled that law enforcement efforts to secure the border should not negatively impact on regional and local economies that are forced to use local and state resources to defend a national border.

Other findings were significant in that they concluded the state plan would not succeed without substantially more federal support. The federal government has not sufficiently staffed and equipped the Office of Field Operations at the ports of entry to reduce smuggling, nor have they provided for the secure and efficient movement of people and commodities to and from Mexico. The Council suggested that resources be increased to better detect and deter northbound and southbound smuggling. Border security operations require an even higher effort of coordination, hard work and sacrifice by dedicated local

and state law enforcement officers, Customs and Border Protection and other federal agencies, such as the U.S. Coast Guard. Local, state, and federal law enforcement along the border need enhanced encrypted radio and other communications capability to support operations and better ensure officer safety.

The BSC findings formed the nexus of initiatives that define the Texas operational level effort against narco-terrorism. Generally, border security operations should be expanded to augment southbound inspections to curtail the smuggling of bulk cash, stolen vehicles and weapons to Mexico. The state should expand its use of technology in the border area to include video surveillance, electronic fingerprint booking stations, electronic license plate readers, information-sharing technology systems, night vision goggles and forward-looking infrared radars (FLIR). More state and local money is needed to expand border radio interoperability and fully implement the Texas data exchange in the border region. The council also recommended expanding manpower to include K-9 units at each port of entry in coordination with federal border operations.

C. Unified Commands (UCs) and Joint Operations and Intelligence Centers (JOICs)

Perhaps the most unique aspect of the Texas border security effort is the organizational plan for tying together all participants into a common scheme. The overall plan is structured much like a military-style "joint" command and control pyramid with strategic, operational and tactical elements united within layered "headquarters," and tied together with world-class communications and training.

The big difference between a military and the Texas solution is that no one in the latter is in command. Instead, the Texas effort led by the Texas Rangers is dependent on a cooperative relationship based not on command authority, but on a shared relationship, trust and commitment to work together. The key coordinating elements are the "unified commands" (UCs). These are headquarters-style organizations created for six border sectors (El Paso, Marfa, Del Rio, Laredo, Rio Grande Valley and Coastal Bend) consisting of multiple jurisdictions with coordinated and shared federal-state-local-tribal responsibilities and resources.

By design, UCs in each sector allow agencies with six regional "joint" legal, geographic and functional authorities to work together effectively and efficiently without diminishing the authority, responsibility or accountability of any agency. UCs typically include: federal agencies (U.S. Customs and Border Patrol, Federal Bureau of Investigation/FBI; U.S. Immigration and Customs Enforcement/ICE; DOJ's Bureau of Alcohol, Tobacco, Firearms and

Explosives/ATF; Drug Enforcement Agency/DEA; U.S. Coast Guard). Regional agencies include High Intensity Drug Trafficking Areas/HIDTA; the Joint Terrorism Task Force/JTTF; State agencies include state military forces; DPS; Texas Parks and Wildlife Department (TPWD); Tribal authorities; County Sheriffs' Offices and municipal police departments, and other law enforcement agencies. UC operations also coordinate and solicit support from and for non-law enforcement government agencies such as: U.S. Postal Service, Department of Transportation, National Parks Service, and private companies such as railroads, UPS and FedEx; and private agencies such as the Civil Air Patrol and the Texas and Southwestern Cattle Raisers Association. The El Paso UC also includes several counties from the state of New Mexico.

UCs promote interagency communication and information sharing They analyze situational developments and produce and distribute recommendations for decisions and actions. They coordinate follow-up actions that are directed through consensus of the UCs. In other words, UCs are decision-making organizations that develop and seek to implement consensual solutions to defeat narco-terrorism at the border.

Every UC has a senior Texas Ranger on board to ensure that unified commands are held together. State, local and federal participants have offered the Texas Rangers the distinct advantage of coordinating the border security effort through a set of facilities and communications shared by all. This cooperative arrangement is connected using a communications network very similar to a military joint unified command. Six state unified tactical commands termed "Joint Operations and Intelligence Centers" (JOICs), are located in El Paso, Big Bend, Del Rio, Laredo, McAllen and the Coastal Bend. These headquarters are in turn linked to Austin and Washington. The JOIC network facilitates coordination among law enforcement agencies by developing a shared understanding of the threat environment. They serve as all-source information components in each of the security sectors producing tactical and strategic intelligence that support border security operations and also statewide anti-smuggling decision-making and activities. It is important to emphasize the UC/JOIC "command and control" system places the greatest emphasis and support at the local/tactical level.

D: The Border Security Operations Center (BSOC)

The heart and operational engine of the Texas border security effort is located in Austin within the Border Security Operations Center. All unified command and joint players intersect in a single facility administered by the Texas Ranger Division of the DPS. The BSOC collects and shares information from all state, local and federal agencies. Six years of

experience has produced a collaborative interagency network that has grown by establishing trust and confidence among network participants from strategic through tactical. The comity engendered through successful operation allows the BSOC team to chip away at bureaucratic cultures and mindsets. Such experience serves to generate interpersonal incentives and rewards selflessness and a commitment to collaborative behavior.

From its inception, BSOC has been augmented by liaison personnel from the U.S. Border Patrol and Texas military forces. Also joining the effort are liaison officers from U.S. federal and state agencies to participate in planning, coordinating and resourcing the tactical unified commands. All partners in the war on narco-terrorism in Texas come together at BSOC to develop strategic and operational plans, superintend military-styled after action reviews following each joint operation on the Rio Grande. Collectively, state, local and federal participants work to identify resource shortfalls.

In a manner very similar to a military division level headquarters, BSOC staff assimilates and analyzes information from each local unified command and sector with the intention of developing a dynamic Common Operational Picture for prioritization of statewide, regional and local law enforcement operations. The Ranger leadership commands all of the tactical "close combat" field operators such as the Texas Highway Patrol (THP), as well as various combined Strike, Ranger Reconnaissance, Criminal Intelligence, Counter Terrorism, and DPS Aviation teams.

Today, the BSOC forms the centerpiece of an informed, knowledgeable group of men and women who have learned the art of strategic thinking, operational and tactical innovation, and proactive intelligence development. The greatest challenge for the system today is at the tactical/local level of law enforcement where the potential for cartels to corrupt public officials and law enforcement personnel is greatest. Local municipal and law enforcement levels, including ranchers and their organizations, are empowered by their Texas state partners with actionable intelligence, surveillance and other real-time information that triggers appropriate responses to reduce "vulnerabilities" to criminality and corruption at and near the border.

As an example of the benefits, the Texas Department of Public Safety's Border Auto Theft Information Center (BATIC) receives thousands of inquiries every week for information on suspicious vehicles. Many of these are from requesting officers, but a great many are from citizens. Ranchers routinely observe and report cartel vehicles as they crash through fences or speed though properties.

VIII: Texas Border Communications Operability & Interoperability

Experience in modern warfare conclusively demonstrates that no campaign can be implemented successfully without a seamless communications network that ties together every participant from tactical to strategic. Texas is a big state with an even bigger appetite for radios and telecommunications equipment. A significant portion of the international border between El Paso and Brownsville is very rural with no terrestrial radio or cell phone communications of any kind. Urban areas along the southwestern border typically operate proprietary radio systems different from rural areas like the lower Rio Grande Valley.

Many current radio systems, towers and antennas in southwestern border counties and elsewhere are 25-30 years old and cannot be maintained. A huge proliferation of locally bought radios has led to a crisis in interoperability that has forced law enforcement agencies and first responders to improvise ways to talk to each other across incompatible police, sheriff's and fire department radios. Newer, secure mobile data terminals for police and emergency vehicles are not commonly used to communicate with central dispatch offices, Texas and federal criminal information databases.

Texas developed a temporary fix to the interoperability problem though the use of mobile teams mounted in trailers and vehicles capable of being dispatched in emergencies to "plug" holes in radio coverage. Texas DPS can activate Communications Emergency Operations Teams as needed to respond to southwestern border region problems. These teams usually work in conjunction with the emergency communications fleet consisting of mobile communications trailers and generators.

Local "tactical" operations are managed from the Mobile Command Center, a 53 foot-long semi-trailer. It provides satellite connection to the DPS computer network, telephone, fax, television, wireless Internet, numerous LCD monitors, aircraft video downlinks and radios on various law enforcement frequencies. In addition, two 40foot and one 30 foot mobile communications trailers are equipped with radios on various law enforcement frequencies as well as a radio gateway for interconnection between the frequency bands. Satellites provide connections to DPS computer networks, telephone, fax and television for access to news and weather channels. Flat panel LCD monitors provide control of the radios and the DPS Computer Aided Dispatch system.

DPS has equipped nine other Field Support Units with television, Internet and radio communications all powered by on-board diesel generators. Six other units are strategically located throughout the state, one in each region, to provide communications support to

any incident or disaster. These mobile platforms are useful in emergencies and during occasional tactical operations, but they fail by a large margin to fix existing interoperability problems. Too often when incidents occur sheriffs, fire departments, volunteer firefighters and other law enforcement agencies are unable to report or communicate with each other or with counterparts on the other side of the U.S. border.

Texas is committed to developing a statewide "system of systems" that will link all law enforcement and emergency responders together. The state will never have the funds to replace local telecommunications with a single set of common equipment. So the scheme currently under development is a cooperative one that allows regional systems to operate independently with added capability when needed to communicate with other regions and agencies through a state-hosted gateway.

This Texas Radio Coalition system (TxRC) represents Texas' 5,300 public safety and emergency response agencies. It was formed in 2006 to begin improving the disjointed approaches to public safety and emergency response communications across Texas. Before the TxRC, there was no statewide user group specifically constituted to examine communications problems across Texas. To date, the TxRC effort has made great progress in forming partnerships between local, state and federal agencies that previously had never shared a common network. In addition, the state DPS has agreed to take responsibility for implementing the state public safety wireless communications strategy, which includes oversight of the distribution of grant funds among all state agencies.

Thanks to TxRC, Texas has a plan to create a common statewide communications system. Unfortunately, the system will be expensive and is entirely dependent on funding from the federal government for implementation. The state of Texas estimates that the southwestern border region of Texas will need at least $150 million to fill basic operability and interoperability communications gaps to meet modern standards.

IX: OUTCOMES AND PRODUCTS

Five years of operational, organizational and experimental effort by the Texas Department of Public Safety has proven the value of several programs and initiatives. Some are similar to those of other states and the federal government. Others are unique to the state of Texas.

A: TxMAP

Texas DPS developed TxMAP as a statewide mapping capability to complement its common JOIC communications system. TxMAP graphically, and in near real-time, displays and shares with UCs and federal agencies a crime map that includes all drug, cash and weapons seizures. It fuses information from other agencies such as ICE arrest and seizure data. The system ties together operational incident reports, THP seizure reports and air sightings and includes a common operating picture shared by all levels from tactical to strategic.

The unique TxMAP software and database allows all agencies in Texas to track the movement of criminal elements and to associate and link seemingly unrelated crimes. The system offers all UCs in Texas the ability to video conference. JOICs routinely use the system to assign law enforcement patrols to specific crime "hot spots" across the state.

The TxMAP image server is smart and versatile. Software in the server matches the received image to a sensor that provides geographical coordinates and places an icon representing the sensor on a map. Then the system then frames the image in red and broadcasts it to pre-selected multiple addresses including CBP checkpoints, sheriffs' dispatch centers, ranchers, and local law enforcement officers. This notification process is facilitated by smartphones and a quality cell network.

B: DPS-BSOC: A Collaborative Learning System

The Texas DPS has been committed to the development of a border security training and educational strategy focused on developing a "community of interest" among all agencies participating in the war against the cartels.

The training is run out of the BSOC in Austin and provides a decentralized statewide program intended to mitigate the bureaucratic limitations of traditional public sector institutions. The DPS-BSOC training and educational scheme links participants including state military forces, U.S. Coast Guard, THP and such federal agencies as the Federal Emergency Management Agency (FEMA) and DHS, and local law enforcement agencies.

This multiagency information-sharing enterprise also serves as an unofficial and unstructured leadership development and talent management network. BSOC leadership reiterated the importance of developing Texas law enforcement initiatives that incentivize and reward strategic thinking and operational and tactical innovation.

As a key strategy for the war on cartels, the BSOC is committed to creating a collaborative and decentralized versus top-down statewide and border law enforcement operational

environment that leverages the Internet and related technology, thus enabling participants to become part of an adaptive learning organization.

C: Autonomous Surveillance Platform (ASP)

In November 2005, the federal Department of Homeland Security launched the Secure Border Initiative (SBI), a multiyear, multibillion-dollar program aimed at securing U.S. borders and reducing illegal immigration. The SBI program was supposed to employ radars, sensors and cameras to detect, identify and classify the threat level associated with an illegal entry into the United States between the ports of entry. In addition, SBI tactical infrastructure (fencing, roads, and lighting) was intended to enhance U.S. Border Patrol (USBP) agents' ability to respond to illegal entry.

Most assessments admit that the SBI experiment failed due to cost and technology shortfalls. The cost per mile to build southwestern border fencing was prohibitive and the SBINet system was never proven to be technologically feasible. Nevertheless, by late 2008 about $2.4 billion had been allocated to complete approximately 670 miles of vehicle and pedestrian fencing along the roughly 2,000 miles of border between the United States and Mexico. Proposals to build security fences along the U.S.-Mexico border also inflamed sentiment in Mexico and the U.S. Texas DPS concludes that a fence from Brownsville to El Paso would simply be too expensive to build and keep under surveillance. A strategic fence effort would limit fence building to established crossing points, ports of entry and metropolitan areas.

Recently DPS has developed and deployed a low-cost, low-tech surveillance system. This Autonomous Surveillance Platform (ASP) began with a test system of several cameras along the border. The technological heart of ASP is nothing more than small, comparatively inexpensive “wildlife” cameras linked to the Internet. These small palm-sized ASP cameras contain an infrared sensor that captures remarkably good images triggered by body heat or detected motion. The cameras transmit jpeg files via cellphone to an image server that, in turn, passes the images on to both TxMAP and other e-mail addresses accessible by desktop PCs or mobile devices. The current limit of the infrared flash used at night is about 40 feet. With an external or long-range antenna, the cameras can operate in areas with marginal cell phone coverage. Without a trigger, the camera reports on its own “health” with a single image once a day. During the test period, ASP camera observations resulted in over 300 border interdictions of cartel scouts and coyotes.

D: Ranger Reconnaissance Teams

The Texas Rangers have been the lead coordinating force behind the Texas border security effort. This remarkably small group has assumed leadership in Texas for stopping the encroachment of the cartels into the state. The tactical manifestation of this effort is the Ranger Reconnaissance Teams (RRTs).

The Rangers are the mission lead for a cooperative program that brings together a coordinated ground, air and marine assault capability. Each participating federal, state and local agency voluntarily adds its unique capabilities to the tactical battle. The THP acts as an outer perimeter for the Rangers by funneling traffic toward Ranger border positions. The tactical contact teams deploy along the Rio Grande in small, concealed positions and are able to quickly respond to intelligence from APS platforms, DPS and National Guard surveillance helicopters, as well as calls to UCs from local police or citizens. DPS Dive Teams conduct SONAR scans of the Rio Grande and assist in recovery of vehicles and contraband in splashdown areas. "Spiking" teams from the Border Patrol add their manpower and sophisticated surveillance equipment to assist in containing and apprehending traffickers. Texas military forces install ASP cameras on trafficking routes, provide aerial support for surveillance and support communications to all team participants

The Rangers have engaged all of the internal Texas law enforcement organizations. DPS SWAT teams provide snipers for clandestine overwatch. The DPS Aviation Section allied with aircraft from the Texas National Guard, provides a standby means for air insertion that is able to respond very quickly to requests from U.S. Border Patrol. These aircraft identify and call out threats, and provide early warnings of approaching threats from Mexico. Aerial surveillance cameras provide a vital service by recording team engagements for later exploitation by BSOC intelligence. The Border Patrol provides tow trucks and wreckers to assist the teams in extracting submerged vehicles that smugglers use to transport drugs to Rio Grande crossing points.

Clearly the mission is greater than the available resources. For that reason, the Ranger leadership has been forced to prioritize deployment of its reconnaissance teams to the most serious tactical threats. The teams have focused their attention on a series of successful tactical operations in the lower Rio Grande Valley beginning in June 2010. These missions began with ground and air reconnaissance patrols identifying filtration routes through the valley. Hidden in small groups and working mainly at night, RRTs identified and apprehended cartel "scouts" or spotters and recovered illicit narcotics, currency, contraband and vehicles from splashdowns in the Rio Grande.

The resource issue remains the greatest impediment to the continued success of the Rangers' border war against the cartels. Budget cuts for DHS, FEMA, U.S. CBP, ICE,

Transportation Security Administration (TSA) and the Coast Guard have severely constrained the ability of Texas to rely on federal partners and their resources to expand border operations. Border protection agencies have suffered restrictions on overtime pay and severe limitations on fuel.

X: THE CONDUCT OF MILITARY-STYLE OPERATIONS: OPERATION BORDER STAR

Operation BORDER STAR is essentially the state's "concept plan" for joint defense of southwestern border counties and constitutes the state's operational border security framework. The importance of this effort has grown exponentially with the escalation of cartel-related border crime. The operational plan integrates the cooperative participation by ICE, DHS' Office of Counternarcotics Enforcement (OCE), CBP, DEA, ATF and the FBI as well as all Texas, local and tribal partners.

A: Purpose

Beginning in January 2008, and extended in 2009, Operation BORDER STAR has served as the focus of enhanced patrolling, surveillance and actions to deter, disrupt and disorganize cartel criminal enterprises operating throughout Texas and in the six operational border sectors. In crafting and executing Operation BORDER STAR, the state has been careful to ensure complete compliance with and support for both the Texas Homeland Strategic Security Plan (2010-2015) and the U.S. DHS's agenda for addressing potential threats from across the border.

The operational intent is for all local law enforcement and first responders to remain responsible for the initial detection of cross-border activity or violence. This policy ensures that neither state nor federal authorities will usurp local authorities in dealing with lawlessness within the southwestern border counties. In addition, the strategy for UC responses to cross-border violence was to be driven by intelligence obtained from multi-agency sources brought together by JOICs.

B: An Instructive Anecdote

A good example of the value of tactical unified border operations occurred during Operation Comanche Moon. The Texas Rangers were conducting a ranger reconnaissance operation south of the Mexican border along Falcon Lake. The Rangers had some early activity with the Zetas cartel and had made some pickups of traffickers and drugs. RRTs and

Texas Game Wardens had made several arrests and the operation was gaining momentum when to the total surprise of those on the U S side, an operation conducted by the Mexican Navy, Marines and Army started up just across the border from the Rangers' operation. This "accidental" joint and international operation had a remarkable impact on drug trafficking on both sides of the border. In short, the accidental combined operation resulted in an immediate stop to all trafficking in that region for the duration of Comanche Moon.

The success of this accidental "joint" operation is instructive and begs the question: how much more effective would border security operations be if data and intelligence could be better shared between U.S. and Mexican border forces? Even more decisive, of course, would be a "coalition"-style military operation that would bring together the combined U.S.-Mexican military and law enforcement forces in a well-designed, coordinated and synchronized joint security effort. Senior military leaders who witnessed Operation Comanche Moon surmised that a sustained coalition campaign would probably secure the border from drug trafficking and other illegal activities in nine to 12 months.

C: Operation Blue Heron: Ranger Reconnaissance Teams in Action

Operation Blue Heron, conducted in October 2010 was an effort by the Rangers that demonstrates how complex and inclusive these RRT operations have become. The Rangers planned Blue Heron as a response to narco-terrorists' efforts to establish a sophisticated supply chain operation linked through Texas border counties. The Rangers focused on Hidalgo County, an area of growing narcotics trafficking and local corruption. Many natural shallow arroyos, creeks and wooded cuts along this sector of the Texas-Mexican border make it ideal for smuggling.

The concept for the operation centered on the insertion of about 20 small, five to six man "joint" observation teams into the border area, principally along the banks of the Rio Grande with the stated mission of conducting a zone reconnaissance in sector to identify and conduct surveillance of illegal infiltration routes. These teams were truly "joint" in that each was built around small teams headed by a Ranger and joined by Border Patrol, Fish and Wildlife and, on some occasions, the Texas National Guard, with the provision that Guard members could not become involved in arrest and apprehension.

The leadership added defense in-depth by enlisting the THP to "work the flanks" along all roads radiating northward from traditional border crossing sites. THP teams stationed themselves strategically in order to prevent the smugglers from reaching major Texas highways and engaging in dangerous high-speed chases. Border Patrol Riverine units

patrolled the river both to spot crossers and if possible "herd" them toward RRTs waiting along the riverbanks. Standing by on alert were rapid reaction teams mounted aboard DPS Aviation positioned strategically north of the border to react to calls for assistance from the RRTs.

The Rangers knew that enemy "scouts" lined both sides of the border waiting to identify and pass on RRT locations to the crossers. Success depended on secrecy and stealth in order to avoid detection. RRTs and their support moved clandestinely into position at night trying to avoid known enemy scout positions. Supporting units, helicopters, patrol cruisers and boats were kept ready in locations away from scout observation posts.

The first action of the smugglers was to flee when detected by RRTs. Smugglers and scouts reported on the presence of RRTs using radios and cellphones. To protect smugglers, scouts often acted as ad hoc counter-assault teams to distract or occasionally shoot at officers. To counter this threat, RRTs and helicopter crews were heavily armed with automatic weapons against an enemy increasingly prone to react with violence when detected.

The operation went down much as planned. Immediately after dark, smugglers began to cross by small rubber boats floating deep in the water under the burden of a ton or more of plastic wrapped marijuana bundles. When possible, Rangers and their colleagues "jumped" the smugglers and took them into custody on the spot. Many more smugglers fled when confronted, abandoning their loads and rushing northward into the protection of waiting scouts. RRTs passed on the smugglers' routes to Border Patrol and THP personnel with the hope that smugglers would be apprehended before disappearing into hide houses and safe areas occupied by the scouts. Those smugglers who succeeded in eluding RRTs were often spotted by FLIR-equipped helicopters orbiting above. When detected by air, the smugglers attempted to set fire to their drug-laden vehicles using gasoline bombs.

Four days of intensive operations yielded over two tons of narcotics along with the apprehension of over 100 illegal aliens, including 10 Indians who began their journey to the border from New Delhi through Bangkok, Vietnam, Moscow, Cuba, Guatemala, Costa Rica onward to Mexico and ultimately Texas. The RRTs learned a great deal about the increasingly adaptive and creative cartel operations. The cartel's usual smuggling method involved a lightning quick meeting between rubber boats carrying the narcotics across the river and a stolen SUV or pickup on the U. S. side. The Rangers discovered that the enemy increased his probability of escaping the THP by scattering "caltrops," essentially small, sharp-edged devices intended to flatten the tires of pursuers. The enemy employed an increasingly sophisticated scout effort that included the use of "dry runs" and deception

operations to confuse RRTs. The scouts even constructed sophisticated "lay up" positions equipped with comfortable chairs, tree climbing ropes to gain better visibility and very expensive and effective handheld radios for maintaining contact with smugglers.

Blue Heron was just one of many such operations conducted in 2010-2011. After each mission, all players participated in after action reviews (AARs) to learn and pass on lessons to the next set of operators. The main lesson learned by the Texas DPS from these operations is that they face an elusive, creative, ruthless, well-armed and superbly financed enemy who is trying to learn and adapt at a faster pace than their American enemy.

XI: TEXAS AS A LABORATORY FOR A NATONAL EFFORT

Five years of state operations have yielded valuable lessons and insights that can improve the border security operations of states and U.S. federal agencies. Below are insights shared by senior leaders within the Texas DPS who consider their operations in the war against narco-terrorism to be a model for how this war might be prosecuted in a wider, multi-state and national campaign.

They accede to the fact that much of their effort was derived from experience in recent campaigns in Iraq and Afghanistan. Adaptation of a military-style effort is driven by an appreciation of the ability of the military to achieve a common approach to confronting the enemy in spite of differences between coalition partners and host governments. Without question, the military brings to the table decades of successful operations against adaptive enemies who seek to win against a shaky coalition that often is crippled by differences in operational method and procedural techniques.

A: Strategic

The Texas campaign against the cartels has proven the value of a control scheme that involves local, state and federal partnerships without sacrificing the sovereignty of any agency. The success of RRTs and Operation BORDER STAR demonstrates that a joint effort between organizations is greater than the sum of its parts. By their own admission, federal agencies willingly participate in these efforts because they recognize their value. As with any military-style effort, strategic success is dependent on shared intent. Beginning in 2006, Governor Perry and his Texas homeland security team took the time to develop a coherent border security strategy. Working closely with border sheriffs, the team stressed the importance of cooperative engagement. No strategic program can succeed unless all participants -- tactical, operational and strategic -- are knit together by a common doctrine and shared communications.

The state patiently "shopped" the strategy by engaging all participants through the Border Security Council that worked in a sense as both a sounding board to highlight issues to the federal government and a vehicle for creating a sense of commitment from every state and federal agency. The Unified Command structure created by the state in 2006 is the glue that holds this alliance together. By building the structure from the bottom up rather than the top down, Texas created a willing alliance between the most threatened regions in the state.

The state then connected each of the six UC regions together using the Joint Operations and Intelligence Center (JOIC) network. UC/JOICs in effect replicate the military system of joint command and control that has proven so successful in Iraq and Afghanistan. The difference (and the genius of the system) is that Texas successfully substituted "cooperation" for "command" without substantially forfeiting any of the effectiveness lost by sacrificing unity of command. Certainly, the system is imperfect. The structure would surely fail should trust be lost or the sense of comity forsaken by one level seeking undue credit over another. So far this has not happened due in large part to the commitment by all to prevent the intrusion of the cartels into American territory.

B: Operational

The Border Security Operations Center complex in Austin is the operational headquarters that effectively ties local law enforcement to state and federal resources, and ensures a unity of effort. The BSOC achieves this goal by bringing together all operational level-state entities such as the Rangers, Texas military forces and THP under a single joint and interagency system of management and control.

One lesson from past failures was the imperative need to close the gap between tactical defense along the border and operational depth throughout the state. The idea that a single point defense could interdict persons crossing the border violates a tenet of war: narrow, single point defenses are both porous and brittle, and can easily be defeated by an intruder that manages to "break through" by piercing a single defensive line and moving very quickly into the undefended areas deeper in the state and beyond.

Texas DPS uses a layered "defense in depth" at the tactical and operational levels. This approach seeks to extend interdiction beginning with a low-cost interconnected set of sensors that extends from the banks of the Rio Grande inward through the entire depth of the southwestern border counties. Such a system is made possible using off-the-shelf

sensors, some as unsophisticated as store-bought deer detectors, linked to a regional command and control facility with GPS and cell phones.

The key to the success of this effort is proliferation and tactical depth at the sacrifice of sophistication. Some of these sensor-detectors cost as little as a few hundred dollars. State border authorities are careful to hide these devices to prevent detection, but their low cost and density along the river makes their loss to the narco-terrorists affordable.

C: Tactical

The first principle of Texas border security operations is to empower local law enforcement. Soldiers often say that a bad strategy can never be salvaged by bad tactics, but good tactics can often salvage bad strategy. This saying simply reinforces the truism that no national strategy that seeks to defeat narco-terrorism can be adequately confronted unless the tactic units such as local police and federal border security stations are properly staffed, resourced, competent, and well-led.

The Texas DPS focuses most of its effort on the border counties. The BSOC in Austin understands that border sheriffs are overwhelmed by the threat of narco-terrorism. To use a military analogy, sheriffs are the close combat forces of the narco-war and it becomes a matter of first-priority that sheriffs have all they need to achieve success. The JOIC is structured to put information gathering from local law enforcement first in priority. The Rangers work closely with local enforcement officers to ensure they are never overpowered by the firepower and technical sophistication of the cartels.

RRT operations have developed firsthand a creative and imaginative set of tactical, close combat skills. The timely military adage that "the enemy has a vote" continues to drive innovation and change in the Ranger's tactical method. Narco-terrorists have the patience, commitment and money to threaten the security of the state in many complex and changing ways. Tactical teams have learned to counter by deploying in smaller units, operating principally at night and linking with assets such as the THP that offer defense-in-depth. Most troubling is realization that the cartels are becoming more violent. Lately the Rangers have been involved in shootouts with well-armed narco-terrorists willing to kill to protect their illicit cargoes.

Texas has sought to implement the most cost-effective and reliable strategy for achieving technological dominance at critical border crossing points. While narco-terrorists are a national strategic threat, they are motivated by money not religion or ideology. Thus at the tactical level they will seek the most effective means for crossing using the cheapest human

capital. They will avoid crossing where agents, cameras or anti-intrusion technologies are present. Key to cartel success is not to "lose a load."

The aborted federal border fence initiative led Texas DPS officials to employ a simple and inexpensive network of cameras, cell phones and locating devices using off the shelf technologies. They compensate for a lack of complexity by deploying in layers and adding an active human surveillance and immediate interdiction plan that puts teams and helicopters over the target immediately after detection. The greatest drawback to the tactical surveillance system is its lack of persistent surveillance. The border is too long and the cartel's activities are too intrusive to allow anything more than sporadic observation without a larger coordinated effort.

Years of collective effort by Texas law enforcement have yielded a remarkably flexible and efficient system of border protection that involves all levels of command from federal to local. This system is under threat not only by an increasingly ruthless and adaptive enemy, but also by an increasingly diminished budget.

Without question, the future success of this effort will depend on the ability of the state of Texas, local and federal agencies to work together to expand their war against intrusion by cartels. The bottom line, however, is that while today Texas is the front line in this escalating war, the potential consequences of success or failure will affect our entire nation. Thus, it is up to the nation to support Texas in its efforts to defeat this transnational criminal enterprise.

Texas Border Security Study: A Strategic Military Assessment

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ATTACHMENT 1

Fearful and Deeply Concerned Voices

from the Southwest Border

Source: Texas Department of Agriculture

ATTACHMENT I – Texas Border Security: A Strategic Military Assessment

Fearful and Deeply Concerned Voices from the Southwest Border
Source: Texas Department of Agriculture

Arthur Barrera – Texas Ranger

"On a day-to-day basis you see the cartels coming across. And by cartels I mean the cronies and the crooks that work for the cartels. They'll have scouts on this side scouting looking for law enforcement. They report that information back to Mexico so they don't move or smuggle aliens or drugs across at a certain time. So they're very crafty."

"A lot of these ranchers are clearing brush along the river so they can see what's going on. Well their tractor operators are being accosted by these guys telling them to get of the tractor. Quit doing what you are doing."

"They fear for their lives. They have family."

"These people have a right to be free in their own home. Their home is their castle. They need to be able to relax in their front property without having to be chasing off people."

"We are in a war. We are in a war and I'm not going to sugar coat it by any means. We are in a war and it is what it is."

Texas Farm Manager – Identity Protected for Safety Reasons

"I've been here about 25 years and things have definitely changed. We're scared to go on our farms. We don't irrigate at night along the river. We actually have people that aren't supposed to be there quite a bit at different times of the day. There's actual drug running in the middle of the day, high-speed chases on our farms, vehicles being burned. You name it."

"People come out of our sugar cane in fatigues and telling the sugar mill harvesters they need to leave our farms. They've changed the locks on our gates in the middle of the daytime. Locked us in basically. They've tried to take some of our irrigator's cars while they are in them. We're definitely scared someone is going to get hurt."

"A couple of weeks ago they followed a suspicious looking federal express truck, one of them big trucks, and finally ended up in a high-speed chase, ended up on one of our farms. The people jumped into the river. Inside the truck was over a ton of dope. We are sitting there watching from the farm edges and it's scary."

"We have had several instances where the guys, the bad guys take bolt cutters and just cut our locks off and do whatever they want. Come in the farm. We've had instances of them turning off our major irrigation pumps in the middle of the night. We think so they can hear anybody approaching or anything like that. We actually see them moving dope on our farms in the daytime."

"I think they need to acknowledge number one we have a problem. I'm tired of hearing this is safer than ever. You can make statistics tell you anything you want to hear. Maybe statistically there are less murders of border patrol agents and this and that but I've personally talked to several border patrol agents and they feel like they're at risk more than they ever have been."

Dale Murden – Rio Farms Inc.

"It's becoming more and more of a concern this year, absolutely for the first time. We used to never feel threatened in our own country and now all of a sudden things are changing."

"I am afraid it's going to get worse before it gets better. I go to DC a lot and I don't feel like they really understand that we have a problem down here and until I think there's that awareness by the folks in power up there the problem will get worse before it gets better. It just seems they don't really get it yet."

"Safety is a big concern. Food security is a big concern. Terrorism is a big concern. We talk about these being drug cartels and what not but the fact of the matter is that it's terrorism. It's plain and simple to us it's terrorism."

"They use to say this was the backdoor. Well the truth is it's the front door and the front door right now is wide open. So I hope somebody pays attention because anything and anybody can come up here and we don't want that to happen."

"If it's along the border when will it be 200 miles inland or when will it be S00 miles inland and when does it stop. You've got to draw the line somewhere and most of us feel like the line is the river."

Joe Aguilar – farmer who sold operation because of danger

"There's a lot of drug problems. It's getting very, very dangerous, even away from the river, not necessarily along the river line."

"Either you're going to join them or adjust to something different, and I chose not to join any of that so I adjusted to where I decided to quit and move on."

"After so many years it's upsetting, but either you move on or you know it's dangerous for your family so I didn't want to put them through that, and we just we just moved on from farming."

"It's not a good feeling, when you've been doing something all of your life and then you have to change from there to now I'm behind a desk, my hands are so slick that uh I'm not used to that. It's something very different. I'm used to getting on the tractor, harvesting and you know getting all greased up. It's just a different feelings most definitely."

"They are controlling the farmers in the area and it's really getting very sad. Sometimes we feel the federal is not doing enough, the state is not doing enough, but the ones that are really getting hurt is us down here on the end."

Roland Garcia – Special Ranger with TSCRA, covers 5 counties – 200 miles of border

"Being on US soil, you're supposed to feel safe. And the consensus with the ranching community and the people who live along the border that is not the fact. They live in fear and constant terror, so as far as being safe, no."

"For the most part, you've heard of the terror in Mexico that has spilled into the US, that in itself has put an effect on the ranching communities' minds. They know it exists. Either they've had a family member directly involved, or somebody they know has been directly involved, so that fear factor has been set for them."

"It's lawless on the other side. It's semi-lawless I've always said on this side, only because we do not have enough boots on the ground."

"Let's not wait to see if our border is going to hold like what happened with Katrina when their levies didn't hold. Let's not wait for that day."

Susan Durham – South Texans Property Rights Assoc.

"It is totally unstable. Totally unsafe and we want immediate action. The federal govt has turned a blind eye to it. They have been ineffective, and we are very disappointed with our homeland security director who has made statements like there is not an issue on the US side."

"In the US of America we should have the use of our lands, and we're not. We're being held hostage now."

"We just feel like we are forgotten here along the border."

Troy Allen – Delta Lake Irrigation District General Manager

"Three men approached one of our excavator operators and asked him what he was doing. He said well I'm doing my job, and they said well we need you to cease excavating, stop clearing the trees and please move off. They said ok, and they said, we'll be back in about four hours and you need to stop and be gone. And if you're not gone then we'll deal with you then."

"It's a big concern for me because I've got three employees who work down there and I'm worried about the employees. I don't want them to get hurt, injured or even killed."

"We really don't know where to go from here."

Texas Farmer – Identity Protected for Safety Reasons

"We see a lot of things but we keep our mouths shut about it. We just don't want to be on anybody's hit list."

"I keep to myself. The people that are doing what they're doing they keep to themselves. If I see something I ignore it. I look the other way but there is a problem. It's really bad."

"Here on the river you see a lot of stuff and you don't pay attention to it. You walk away. You try to stay in an area where they see you so if somebody gets caught they don't say well they called somebody. You know just try to blend in and not create any waves."

"I'm afraid that I'll be down here with my daughter or my wife checking on something and somebody comes out and shoots somebody. There have been incidents along the river where they have found machine guns. They've seen people with machine guns."

"They need to send more people down here but you need to send them to the river to the border not two miles from the border, not seven miles from the border. You need to stop the problem right here."

Grady Cage, Brooks Co. Rancher

"Been ranching since 1923. Most farmers and ranchers around the nation they find a dead cow, and that's one thing, but just to find dead people, and lots of them, is really something else."

"This is a human tragedy. I've lost count. Back in 2010, there were like 8 or 9. 2008, was 8 or 9, but long story short, it's been well over 45 in the last 10 years we found on the ranch dead."

"We've had equipment stolen and pick-up trucks stolen."

"Not only have they cut fences and gone through fences, but we've actually put up ladders over high fence that points where we know they cross. We use these steel ladders, because if not, they pull them up and pull fence down."

"Ranching is challenging enough without all of these other problems dealing with a criminal element."

Texas Farmer – Identity Protected for Safety Reasons

"I've personally been like three feet away they just bring drugs and loads right in front of you. Just blatant."

"I'm not going to confront them."

"If I'm standing there and they're looking at me, I don't call anybody, because I'm not getting involved. But if they don't see me, then I call Border Patrol."

"But the Border Patrol, I could tell you that their hands are tied about a lot of stuff. They have to call Washington, even if they are having a gun fight down at the river, they are on the phone. They have to call Washington."

"The border patrol have boats on the river. They patrol the river. They are not allowed to pick up anybody that's in the water unless they are dead."

"If there's drug guys loading drugs, all they have to do is step out and wade out in the water and Border Patrol can't touch them. They are not allowed to go into the water. And that guy can sit there and call the Border Patrol bad names and they can't do anything about it."

Lavoyger Duhram, Brooks rancher – one of the first who started the South Texans Property Rights Assoc.

"These people are very well organized and it's a form of business for people to human smugglers and so on to come over so...You're not safe. There's nobody out here who can tell me that they have a gut feeling that they can leave their wife at night...no. You just don't do it."

"These guys are more adamant and come up to your door in the middle of the night, knock and ask, "How far is Houston, Can I borrow your phone, our truck...all those kinds of things."

"As far as these border patrol stations...you say, why are they here? One, because the border is not secure. Two, they shouldn't be here; they should be on the border. That's their job. In my opinion all they got is a red flag sticking up in the middle of the highway, sticking up, saying, "boys, dump before you get here or drive around, and we are on the drive around."

"Maybe if something really happens down here, a mass murder here on this side, then maybe some people will start to listen. But I think that's what it's going to take."

Linda Vickers, rancher in Brooks Co. for about 15 years

"When I get up in the morning and step out the door, I'm looking for rattlesnakes and illegals and I'm packing my gun and my cell phone. When I go down to feed my horses, I have my dog, my pistol and the cell phone. You just have to stay aware."

"Several months ago, I walked in my tack room and my two big dogs went ballistic, and there were two illegal aliens there."

"I get more angry than scared because you cannot be scared. You're just going to have to pull your socks up and just get after it and I've got border patrol on speed dial. WE need more BP on the ground, not sitting in offices. We need them on the ground."

"Will Washington do something?"

"We are not secure. The borders are not secure."

"We are porous. 75 different countries have been apprehended in this area alone. If that doesn't tell you porous borders, nothing does."

"My husband calls it an invasion. I've looked out here and seen a group of 13 going past. I've sat on my back porch and a group of 10 go past. It does feel like an invasion."

ATTACHMENT 2

Brooks County:

Border Issues Not Confined to Border

Source: MySA, By John MacCormack, June 8, 2011

Border Issues Not Confined to Border, MySA, By John MacCormack, June 8, 2011

http://www.mysanantonio.com/news/local_news/article/border-issues-notconfined-to-border-1410247.php

FALFURRIAS – The trophy snapshots of large pickups loaded with bales of marijuana and of exotic foreigners found wandering in the surrounding brush decorate the walls of an office at the Brooks County Sheriff's Department.

"It's been an eye-opener for me. You always heard the stories about the backpackers going through, but you never imagined a ton of dope," investigator Daniel Davila said.

With smugglers relentlessly trying to bypass the U.S. Border Patrol checkpoint just south of town through adjacent ranches, deputies here routinely deal with complex situations unknown to most rural departments.

"This is a national problem. It's not just Mexicans and Hondurans," Davila said. "We've got people from Pakistan, India and China walking through the brush, and those are the ones we know about.

"It's not our problem, but it's become our job."

Once known throughout South Texas for the excellent butter produced by local dairies, Falfurrias now finds itself at the vortex of a wrenching human and political drama caused by the illegal activity coming up U.S. 281.

Several times a week, deputies encounter loads of illegal immigrants sneaking through town, and many of the "coyotes," as the smugglers are known, hit the gas when the blue-and-red lights flash instead of pulling over.

"If they think they can outrun you, they will try it. If they roll over and kill 10 people, they don't care," Davila said.

Other, more grisly photos are kept here in thick notebooks. They depict human remains in varying stages of decay, all illegal immigrants who got lost or were abandoned by their coyotes in the brush.

"Since 2009, well over 100 bodies have been found, and I think we're coming close to 20 this year," Davila said.Ö

On May 10, as President Barack Obama delivered a speech in El Paso on immigration reform and border security, the body of Paulo Gerardo Ferreira Gomez, a 23-year-old Mexican, partly eaten by animals, was found on the misnamed Buena Suerte Ranch.

And as usual, Brooks County bore much of the burden. A deputy, justice of peace and funeral home workers were sent to the scene. If an autopsy was required, it would cost the county $2,500.

Fighting a war

Remote, poor and having no voice in the rancorous national debate about immigration reform and border security, Brooks County is confronted regularly with problems of national and international dimensions.

Driven by powerful global forces, people from Asia, Africa and Europe steadily funnel through here, joining the familiar legions of Mexicans and Central Americans. Some die or are caught, and the rest go north, having paid thousands of dollars or more for the illicit passage.

While apprehensions in the Rio Grande Valley have dropped markedly in recent years, the percentage of non-Mexicans caught has risen sharply and includes immigrants from improbable places like Eritrea, Ukraine and Bangladesh.

And with powerful Mexican cartels now reportedly smuggling people as well as drugs, local deputies face greater risks.

It's not by chance that the Texas Border Volunteers, which stages regular nocturnal watches in the brush to detect and report illegal activity to the Border Patrol, is based here.

"We're fighting a war down here. We're being overrun by people from all over the world," said Mike Vickers, chairman of the group.

"We understand the federal government is not going to protect us and the state government can't protect us, so we're pretty much on our own," said Vickers, a local veterinarian whose ranch is regularly crossed by smugglers.

During a recent "watch," armed volunteers wearing camouflage spent several nights hidden in the brush, using night-vision and thermal-imaging equipment. But the action was light.

"We had two of them walk up to us on the Cage Ranch. They put their hands up and said, 'No mas, no mas,'" said "Gumball" a retired Fort Worth businessman, who asked not to be identified.

"They were beat up and lost. You've got to feel sorry for these guys. If you don't, the milk of humanity does not run through your veins," he said.

Although several hundred U.S. Border Patrol agents work here, the county also must deal with people and drug smugglers. And with an annual budget of $5.8 million and just six full-time deputies, it's ill-equipped for the task.

"The border is along the Rio Grande, but the checkpoint is here, 75 miles inland, and this is where all the activity happens," County Judge Raul Ramirez said. ÖIn one year, he said, Brooks County spent $160,000 on autopsies and burials of dead immigrants.

Sheriff Rey Rodriguez, whose deputies are paid $27,000 a year, has an annual budget of $588,000 and gets little in state and federal grants.

"This is the breakpoint. We have a huge problem with no help. We're not considered a border county, so we don't get federal aid," he said.

Despite this, the department has not shied away from complex investigations. About two years ago, it began working with federal agents to target local drug smugglers.

Last month, Jose Maria Carbajal, a major trafficker who claimed the Zetas as his partners, pleaded guilty to federal smuggling charges. After one big load was seized, he plotted revenge, according to an informant.

"According to Carbajal, the owners of the 1,100 pounds of marijuana (that was seized) are members of the Zeta cartel, (they) want to get to the bottom of it," reads the criminal complaint.

"Carbajal claimed he showed these individuals where Brooks County Chief Deputy Benny Martinez and Deputy Mo Saavedra lived. Carbajal informed these individuals Benny Martinez was in charge in Brooks County and would be the one to capture in order to make him talk about who provided the information," read the complaint.

While the information prompted Carbajal's quick arrest, deputies are under few illusions.

"The guy was very strong. He had the means and the motive to do it. Could it happen? Definitely yes," Martinez said of the alleged threat.

Trail of litter

Most of the trails that meander through the dense live oak thickets on the vast Tepeguaje Ranch belong to the cattle, deer and wild hogs. But Red Bull, beer cans and other discarded items along some trails tell a different story.

"This is all smuggling. This is the Bud Light guy, and we follow his trail a lot," ranch manager Ronnie Osburn, semi-automatic rifle in hand, remarked as he followed one well-trodden path.

Osburn, 61, spends a lot of time alone on the 12,500-acre ranch Öjust south of the checkpoint on U.S. 281, one of the nation's busiest. Since October, more than 90 tons of drugs have been seized here. On Monday alone, more than 5 tons of marijuana was found in two trucks.

Smugglers regularly cross the ranches to move their loads around the checkpoint, cutting fences, breaking water lines and sometimes stealing vehicles. Encounters with large groups or menacing strangers also occur, and Osburn always is armed.

"I go to work in the morning with a Berretta semi-automatic pistol stuck in the pickup seat, and an AR-15 with a 30-round clip in the back," he said. "At night when I'm watching TV, I have the guns with me. And when I go to bed, the first things I move are the guns. That's the way I live."

Discoveries in the brush bespeak of the brutal and often tragic business at hand.

"So far, I've found about 10 bodies, including two in one day. You also see bras and panties, spiffy underclothes like young girls wear, in the trees," Osburn said. "It means they took the young girls off to one side, away from the group, raped them, and then hung their panties in the trees."

A few months ago, one of his cowboys made another bizarre find.

"It was two passport booklets, stapled together and issued in Bangladesh. This guy had made entries in Indonesia, Hong Kong and Africa. It just went on and on. The last entry was to Mexico City, and stuck in there was a boarding pass to Reynosa. I wound up giving it to a Border Patrol supervisor," he said

While Osburn thinks bringing the Army to the border is the solution, not all ranchers share his sense of alarm.

"Right now, the traffic is down considerably from what it used to be," said Presnall Cage, Öwhose 43,000-acre family spread is just north of the checkpoint.

"I kind of go by the numbers of dead bodies picked up on the ranch. Last year, we had only four," he said. "For the last 10 years, we'd been averaging about 10. And we've had none so far this year.

"We haven't had any encounters to speak of in a long while. And we've never had anything horrendous."

Bobby Sanders, 56, a senior U.S. Border Patrol agent at the checkpoint, said U.S. 281 was just a two-lane road and 15 agents worked at the station when he began in 1988.

About the only thing unchanged is the relentless pressure by smugglers to move contraband and immigrants northward.

"It's a constant struggle because we're dealing with issues and problems south of the border. We can no longer control the north wind than what's coming out of Mexico," said Sanders, who does not share the alarmist view of some.

I know 90 percent of the ranchers in the area, and I've yet to have one come to me and say they were threatened on their property," he said. "I believe the border is as secure now as it has ever been in our history. There are more boots on the ground, and they are more capable of handling any situation."

Exposure deaths

Deputy Mo Saavedra III, 25, played a big role in some recent high-profile drug busts, including the Carbajal case. He wears bulky "rifle plate" armor and keeps a loaded semi-automatic weapon in his patrol truck.

"It's uncomfortable as hell, but it will keep you alive," he said.

Over the past two years, Saavedra, 25, spent a lot of time stalking traffickers in the brush, and was a key player in the busts that brought down Jose Maria Carbajal.

"It took us six months in the brush and getting to know the ranchers to find the areas where the smugglers were operating. Then it became a waiting game," he said.

On a recent Friday night, he spent the first couple of hours patrolling U.S. 281 for speeders, drunks and suspicious vehicles. But when a body was found in the brush, as usual, he made the scene.

On a narrow ranch road off U.S. 281, an ambulance sat blinking while a half-dozen Border Patrol agents waited nearby. Inside was the pale body of Ramon Angel Guapo Mosqueda, a 28-year old Mexican from Nezahualcoyatl.

"He's probably been out here two or three days. After three days, they are out of their minds. It's a sucky way to die," Saavedra said.

Kelly Bernard, an emergency medical technician, waited with the body, which had been found beside one empty water jug.

"He's thoroughly dehydrated. His tongue is white and crusty," she noted.

Bernard said Guapo was already dead, despite great efforts to save him, when the ambulance arrived.

"I think the public is desensitized to what the Border Patrol does," she said. "When we got here, one of the agents was on his knees, giving mouth-to-mouth CPR. It was a noble thing to see."

Later, Justice of the Peace Luis Soliz collected information about the death.

"I'm not going to call for an autopsy," he said. "I've been here nine years. It doesn't take a rocket scientist to figure out what he died of. Dehydration due to exposure.

"We've had four (deaths) already this week. That 16-year-old hit me hard. I've got a 16-year-old son."

Back on patrol, an hour later, Saavedra spotted a figure crossing U.S. 281 to a rest area north of the checkpoint. He parked and waited. Eventually, a tattered group came out of the restrooms. The four tired and dirty Salvadorans gave up without protest.

"My father is in Houston. We can't go back. It's very bad in our country because of the gangs," said Sandra Marlena Cortillo, 37, from San Miguel, El Salvador.

She had left a month ago with her daughter, son and sister, paying smugglers $3,000 each to be brought to Houston, only to miss the final connection.

"We got lost in the desert. They left us without water or food," she said of the coyotes, and she began to weep, perhaps not realizing a far worse fate had been avoided.

After Border Patrol agents took the four away, Saavedra headed his big Ford pickup north. There were six hours left on his shift. Just another night on the front line in Brooks County.

ATTACHMENT 3

University Medical Center of El Paso and Texas Tech University Health Sciences Center, Letters to President Obama, March 16, 2010 and April 16, 2010; and Congressman Silvestre Reyes, Letter to President Obama, Supporting UMC Letter, March 28, 2010

UNIVERSITY MEDICAL CENTER
OF EL PASO

March 16, 2010

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Obama,

We are writing in coordination with U.S. Representative Silvestre Reyes (D-TX) on behalf of the Board of Managers of University Medical Center of El Paso, Texas Tech University's Health Sciences Center in El Paso, the physicians and other healthcare professionals who work in our hospital, and the residents of El Paso County, Texas who generously support our Mission via local property taxes. We find ourselves in a unique and challenging situation that we believe merits federal assistance. We write to seek your administration's help.

El Paso, Texas is located directly on the U.S./Mexico border across the Rio Grande river from Juarez, Mexico. In January of 2008, rival drug cartels fighting for control of that country's lucrative drug trade declared war on one another. While the violence was widespread, Juarez quickly became the murder capitol of Mexico. By year's end, more than 1,600 people had been killed on its streets and hundreds of others had been wounded.

Despite the arrival of the Mexican military, which was sent north to quell the violence and reestablish the rule of law in our sister city, the gruesome attacks continued in 2009 when the number of drug-related murders recorded in Juarez exceeded 2,600. Kidnappings, extortion and bank robberies became commonplace. People on both sides of the border were forced to deal with the reality that Juarez had become the most dangerous city in the northern hemisphere and that its problems didn't stop at the Rio Grande.

That became evident on January 23, 2008 when the first of what is now nearly 150 survivors of the violence was transported across the border for medical care at the Level I Trauma Center at University Medical Center of El Paso, our city's not-for-profit, public hospital. Nowhere else along the entire U.S./Mexico border has this occurred.

To date, it has cost the hospital nearly $3 million to care for these patients, $2,234,677 of which has not been reimbursed. Their physicians are also rendering service with little hope of reimbursement. Only 32% of the associated physicians' fees have been paid, which means the Texas Tech University Health Sciences Center Paul L. Foster School of Medicine, UMC's partner in delivering academic medicine, has suffered a loss of $382,000.

Mr. President, neither of our organizations can sustain such losses, yet we are required by federal law to provide life-saving treatment to patients in need of emergency care, regardless of their nationality. We write to ask that you help us identify federal resources that can offset our costs and lessen the burden on El Paso County taxpayers.

Sincerely,

James N. Valenti
President & CEO
University Medical Center of El Paso

J. Manuel de la Rosa, MD
Founding Dean
TTUHSC Paul L. Foster SOM

cc: Board of Managers, El Paso County Hospital District
El Paso County Commissioners Court
U.S. Senator Kay Bailey Hutchison
U.S. Senator John Cornyn
U.S. Representative Silvestre Reyes
U.S. Representative Ciro Rodriguez
El Paso Mayor John Cook
Richard Dayoub, President & CEO, Greater El Paso Chamber of Commerce

UNIVERSITY MEDICAL CENTER
OF EL PASO

April 16, 2010

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Obama,

In follow-up to our letter to you dated March 16, 2010, we write to again express our concerns about the on-going violence in Mexico and the impact it is having on our organizations, University Medical Center of El Paso and Texas Tech University Health Sciences Center Paul L. Foster School of Medicine

As you are well aware, the situation in Juarez, Mexico, directly across the border from El Paso, continues to worsen. Warring drug cartels have already killed nearly 700 people so far this year. Hundreds of others have been wounded. Since our earlier letter to you, we have learned that out of fear, there is now a reluctance or outright refusal by many physicians and healthcare facilities in Juarez to care for the war's survivors. As a result, the wounded continue to cross the border to seek treatment at our Level I Trauma Center. We believe this turn of events represent a new chapter in the deadly violence, one that could jeopardize the safety of our campus.

We are also concerned about how this troubling trend could limit our ability to respond to traumatic situations in our own community. For the most part, the victims that we have cared for have been severely wounded and in need of highly specialized care. Providing it requires extensive resources, human and otherwise. For example, many of these patients have required multiple surgeries and admission to our Intensive Care Unit, some for as long as 30 days. That level of round-the-clock care means the physicians, nurses and ancillary staff that cared for them were not available to other patients, nor were the facilities the patients occupied. In one particularly egregious case, a patient actually had a nearly year-long length of stay in our hospital. Generally speaking, the UMC resources being most taxed are our Level I Trauma Center and our surgical and critical care services, all of which are vital community assets.

4815 Alameda Avenue | El Paso, Texas 79905 | T 915 [illegible]

The issue of cost also continues to be problematic. To date, University Medical Center of El Paso has spent nearly $3 million to care for survivors of the violence. Very little of that expense has been paid, meaning local taxpayers are footing the bill for the consequences of a conflict that is occurring on foreign soil. The physicians of Texas Tech University's Health Sciences Center Paul L. Foster School of Medicine are receiving very little reimbursement for the care they have provided. The school has suffered a $382,000 loss as a result.

We join U.S. Representative Silvestre Reyes (D-El Paso) in again asking your administration for help. Please consider directing federal resources to El Paso's academic medical center to offset our costs and preserve our ability to provide critical services to the El Paso community.

Sincerely,

James N. Valenti
President & CEO
University Medical Center of El Paso

J. Manuel de la Rosa, MD
Founding Dean
TTUHSC Paul L. Foster SOM

cc: Board of Managers, El Paso County Hospital District
El Paso County Commissioners Court
U.S. Senator Kay Bailey Hutchison
U.S. Senator John Cornyn
U.S. Representative Silvestre Reyes
U.S. Representative Ciro Rodriguez
El Paso Mayor John Cook
Richard Dayoub, President & CEO, Greater El Paso Chamber of Commerce

SILVESTRE REYES
16TH DISTRICT, TEXAS

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
CHAIRMAN

COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON AIR AND LAND FORCES
SUBCOMMITTEE ON READINESS

WASHINGTON OFFICE
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DISTRICT OFFICE
310 NORTH MESA, SUITE 400
EL PASO, TX 79901
(915) 534-4600
FAX: (915) 534-7426

http://www.house.gov/reyes

Congress of the United States
House of Representatives
Washington, DC 20515

March 28, 2010

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

As we renew our commitment to assist Mexico in its efforts to combat drug cartels, I would ask that you consider the impact the related violence is having on border communities. Attached you will find a letter from University Medical Center, a Level I Trauma hospital along the U.S.-Mexico border which is also the only public hospital that serves my congressional district in El Paso, Texas.

Over the past two years, University Medical Center has treated over 150 victims of the violence across the border in Ciudad Juarez. To date, caring for these individuals has cost the hospital nearly $3 million, the bulk of which has gone unreimbursed. Only 32% of the associated physicians' fees have been paid. Additionally, physicians and nurses working at the hospital have expressed strong concern for their safety as more and more of their counterparts in Ciudad Juarez have begun refusing to treat these victims due to threats and outright violence directed against them.

Our frontline health care providers cannot continue to absorb these growing emergency care costs, which are placing them at risk of limiting access for our neediest and most vulnerable community members. Over the years, Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (P.L. 108-173), has been a useful reimbursement resource to University Medical Center. Though this funding source has helped cover in small part the cost of providing emergency care for foreign nationals who are medically paroled into the United State and Mexican nationals with laser visas, a significant percentage of the emergency care costs incurred since 2008 has come from caring for U.S. citizens injured in Ciudad Juarez.

University Medical Center is one of many hospitals across the United States that cannot afford to reallocate any of their Medicaid Disproportionate Share Hospital (DSH) funds to make up for uncompensated care. Instead, University Medical Center has relied on local property tax dollars to offset these costs. This past year marked the first time that more than $50 million in property taxes will be used to help the bospital make up for the cost of providing uncompensated care. Since 1998, approximately $400 million in property taxes have been used to offset the cost of uncompensated care for our public hospital.

I urge you to consider their request to dedicate federal resources to compensate border region hospitals, like University Medical Center, so they can better cope with the demands put on them by this surge in violence. Please contact me should you have questions, and I thank you for your consideration of this issue.

Sincerely,

Silvestre Reyes
Member of Congress

Attachment 4

Office of the Governor of Texas, Rick Perry, Letter to Sec. Janet Napolitano, U.S. Dept. of Homeland Security, April 2, 2009, and Letter to Congressmen Rodriguez, Cuellar, Reyes, Ortiz and Hinojosa, May 17, 2010

OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

April 2, 2009

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
108 Federal Office Building
Washington, D.C. 20502

Dear Secretary Napolitano:

Thank you for taking the time to speak with me by phone on March 26, 2009. I look forward to meeting with you at your earliest convenience on several important issues.

I would like to discuss my request for 1,000 National Guard troops to be deployed under Title 32 authority to the Texas-Mexico border to support Texas' border security efforts, and six air assets equipped with Forward Looking Infrared Radar to support night operations. The troops would be used only in direct support of civilian law enforcement and would receive mandatory training prior to deployment. This would provide an immediate increase in the "boots on the ground" in remote areas exploited by the Mexican organized crime cartels to smuggle drugs and humans across the Rio Grande River into Texas and the United States.

As you are aware, the National Guard has provided valuable counterdrug support to law enforcement nationwide for almost two decades, and my request should not in any way be construed as an effort to militarize the Texas-Mexico border. Texas Military Forces has developed a flexible deployment plan for the use of these resources based upon threat. These include:

- 600 personnel to be deployed with 24 Border Reconnaissance Platoons, with 25 personnel each, to cover 20 locations;
- 125 personnel to support Texas Parks and Wildlife Department (TPWD) maritime operations;
- 175 personnel to support air operations, command and control, and military personnel support functions; and
- 100 personnel to support TPWD and Texas Ranger Tracking Teams.

Please find enclosed a law enforcement sensitive operational deployment plan for your situational awareness. As you can appreciate, this should not be released to the public. National Guard resources can be deployed from within Texas. Texas guardsmen have a key interest in protecting their state and an advantageous understanding of the cultural dynamics of Texas and the border region.

During our conversation, you noted that the latest uniform crime report (UCR) data demonstrated a decrease in violent crimes in the Texas border counties, and you requested additional information concerning the threat of spillover violence. Texas defines spillover violence as crimes occurring in Texas as a direct or indirect result of the criminal enterprise activities of the Mexican organized crime cartels and their associates. We are proud of the decrease in crime in our border counties reflected in the UCR data you cited, and we are also pleased that, since 2005, there has been a 52 percent reduction in the rate of illegal alien arrests along the Texas-Mexico border. This was not by accident, but rather through the hard work and sacrifice of many local and state law enforcement agencies working together to conduct high-intensity, patrol-centric operations in support of the U.S. Border Patrol.

However, much more needs to be done to secure the U.S.-Mexico border from all threats, as the Mexican cartels have seemingly unlimited resources and constantly seek ways to penetrate our nation's border to derive profit from the lucrative drug and human smuggling market. For example, as we increased our unified patrol operations, the Mexican cartels began using transnational gangs, such as Barrio Azteca, Texas Syndicate, Mexican Mafia, MS-13, Hermanos de Pistoleros Latinos and Tango Blast Houstones, to smuggle drugs and humans into Texas, and cash, weapons and stolen vehicles into Mexico. These gangs are also being used to extort, kidnap, torture and murder on both sides of the border.

Transnational gangs are also recruiting in our prisons and schools to support these violent cartel-related criminal activities on both sides of the border. The Texas border region is home to only 9 percent of the population in Texas, yet it accounts for nearly one in five of all juvenile felony drug referrals in the state. Furthermore, the border region now accounts for 18 percent of all juvenile gang referrals in Texas. Every major metropolitan area in Texas is experiencing Mexican cartel-related gang activity.

It is my recommendation that the federal government adopt a proactive, rather than reactive, approach in addressing the threat from spillover violence by immediately increasing the security along the U.S.-Mexico border with an overwhelming uniformed patrol presence on the ground, in the water and in the air, enabled and supported by technology.

The U.S. Border Patrol currently has approximately 18,000 U.S. Border Patrol agents to secure the 2,000 miles of U.S.-Mexico border and 4,000 miles of U.S.-Canada border, which is woefully insufficient. Similarly, the Office of Field Operations lacks the necessary personnel and technology to secure the international bridges from north- and south-bound smuggling. Until U.S. Customs and Border Protection receives sufficient staffing and resources, it is imperative that the federal government explore alternatives to immediately increase the security of our nation's border.

In my February 26, 2009, letter requesting National Guard resources, I also recommended the establishment of a Border Region Security Initiative to invest in local law enforcement as a cost-effective way to quickly increase patrol capacity along the U.S.-Mexico border. I was encouraged by your recent announcement that $59 million in Operation Stonegarden funds would be provided to the four southwest border states. I ask that you allow these funds to be used by local law enforcement agencies to hire patrol personnel without a federal requirement that these positions be retained after the funding has been exhausted. Otherwise, many of the local law enforcement agencies will not be able to accept these funds.

Securing our nation's borders is critical to securing the homeland and is the best way to address the threat of spillover violence. However, we have a motto in Texas: "Plan for the worst and pray for the best." We have developed integrated, multi-agency contingency plans for spillover violence for each of the five border security sectors in Texas, which I will forward to you separately. Please do not hesitate to contact me regarding this or any other issues we have discussed.

I greatly appreciate your consideration of my request. No effort can be of greater importance than the public safety and homeland security of Texas and the nation.

Sincerely,

Rick Perry

Rick Perry
Governor

RP:gep

Enclosure

OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

May 17, 2010

The Honorable Ciro D. Rodriguez
U.S. Representative, District 23
U.S. House of Representatives
2351 Rayburn House Office Building
Washington, D.C. 20515-4323

The Honorable Henry Cuellar
U.S. Representative, District 28
U.S. House of Representatives
336 Cannon House Office Building
Washington, D.C. 20515-4328

The Honorable Silvestre Reyes
U.S. Representative, District 16
U.S. House of Representatives
2433 Rayburn House Office Building
Washington, D.C. 20515-4316

The Honorable Solomon P. Ortiz
U.S. Representative, District 27
U.S. House of Representatives
2110 Rayburn House Office Building
Washington, D.C. 20515-4327

The Honorable Rubén Hinojosa
U.S. Representative, District 15
U.S. House of Representatives
2463 Rayburn House Office Building
Washington, D.C. 20515-4315

Dear Congressmen Rodriguez, Cuellar, Reyes, Ortiz and Hinojosa:

Thank you for your April 8, 2010, letter and for recognizing there can be no national security without a secure Texas-Mexico border. The federal government has failed to effectively secure our border and, in recent years, violence in Northern Mexico has skyrocketed.

As you know, I have asked the Obama administration to authorize 3,000 federal Customs and Border Protection personnel, 1,000 Title 32 National Guard personnel and the use of Unmanned Aerial Vehicles (UAVs) along the Texas-Mexico border. Improving border security should not be a partisan issue, especially in Texas. I greatly appreciate the support of the Texas congressional delegation, from both sides of the aisle, to request additional federal resources for the Texas border region.

However, until the federal government dedicates sufficient resources to secure the border, it is important that state and local law enforcement work closely with their U.S. Border Patrol partners to protect Texans.

This is a growing challenge. Mexican cartels have steadily used terror tactics and prison gang affiliations to evolve into powerful and ruthless organizations operating on both sides of the border, including in many of our communities.

Byrne Grant funds have been a valuable tool in our fight against these forces. Beginning in 2006, my office has allocated $78 million in Byrne Grant funds to the border region, helping provide much-needed overtime wages, equipment and other resources to local law enforcement. The border region has received 39 percent of all state-directed Byrne Grant funds distributed in Texas. These grants are invaluable, since they provide more flexibility to allow local law enforcement agencies — who best know their own needs — to determine how this money can best serve their communities.

When it comes to funding for border communities, the 3 percent calculation you cited in your letter for Homeland Security Grant Program (HSGP) funds is incorrect. Between 2005 and 2009, 17 percent of the state's HSGP funding has been dedicated to the border region.

As you know, FEMA administers the HSGP, which is used to both address terrorism prevention and support response and recovery efforts to all hazards throughout the state. Dedicating all of these grant funds to the border region would violate U.S. Department of Homeland Security (DHS) grant criteria, which require the state to address the federal government's 37 target capabilities.

Since 2005, my office has directed $105 million out of a total of $624 million in HSGP funding to the border region, constituting 17 percent of the state's HSGP allocation from 2005-2009. U.S. Border Patrol can confirm that there are 45 counties that fully participate in coordinated border security operations. A list of these jurisdictions is enclosed.

The border region is a priority of mine in the allocation of federal grant funds, as well as in state spending meant to supplement insufficient federal resources. Since 2007, the State of Texas has provided more than $200 million in state funds to these efforts, enhancing border security by increasing the number of law enforcement officers and helicopters in the area, funding overtime needs and adding equipment in support of coordinated patrol operations throughout the border region.

I fully support your efforts to allocate Operation Stonegarden funds to the border region. As you are aware, DHS changed the grant guidance in 2008, enabling the agency to retain authority to determine which entities receive funding. Regarding the $60 million you referenced in your letter, Texas – a state that includes 64 percent of the U.S.-Mexico border – was allocated only 27 percent of that total. Texas deserves more from DHS, especially considering most of the recent cartel-fueled violence is occurring in Mexican states bordering Texas. Anything you can do to help Texas gain a more appropriate amount of Operation Stonegarden funding would be invaluable in protecting our border communities and our state as a whole.

Lastly, it would be very helpful if border-area law enforcement agencies were freed to use the Stonegarden funds to hire officers with no federal strings attached. In my April 2009 letter to Secretary Napolitano, I requested that DHS remove a federal requirement that any local law

enforcement positions created must be retained after funding has been exhausted. This requirement has hindered the ability of agencies to commit to adding the boots on the ground they so desperately need. I can assure you that your support of this request would be greatly appreciated by the chiefs of police and sheriffs along the Texas-Mexico border.

Thank you for your vocal support for greater law enforcement resources in the border region. With your continued efforts and support of the aforementioned issues, the State of Texas will remain the model for homeland security preparedness. I look forward to working with each of you to secure as much funding as possible to confront and eradicate this threat to our citizens.

Sincerely,

Rick Perry

Rick Perry
Governor

RP:jhp

Enclosure

COASTAL BEND	RGV	LAREDO	DEL RIO	MARFA	EL PASO
Aransas Co SO	Cameron Co SO	Duval Co SO	Dimmit Co SO	Brewster Co SO	El Paso Co SO
Bee Co SO	Hidalgo Co SO	Frio Co SO	Kinney Co SO	Culberson Co SO	
Brooks Co SO	Kenedy Co SO	Jim Hogg Co SO	Maverick Co SO	Hudspeth Co SO	
Calhoun Co SO	Willacy Co SO	La Salle Co SO	Real Co SO	Jeff Davis Co SO	
Dewitt Co SO	Starr Co SO	Webb Co SO	Val Verde Co SO	Pecos Co SO	
Goliad Co SO		Zapata Co SO	Uvalde Co SO	Presidio Co SO	
Gonzales Co SO			Zavala Co SO	Reeves Co SO	
Jackson Co SO				Terrell Co SO	
Jim Wells Co SO					
Karnes Co SO					
Kleberg Co SO					
Lavaca Co SO					
Live Oak Co SO					
McMullen Co SO					
Nueces Co SO					
Refugio Co SO					
San Patricio Co SO					
Victoria Co SO					

ATTACHMENT 5

Letters from Members of Congress Addressed to the White House and Other Members of Congress:

Letter from Congressmen Rodriguez, Cuellar, Reyes, Ortiz, Hinojosa and other Members to the Hon. Nancy Pelosi, Speaker, U.S. House of Representatives, April 15, 2010, and Letter from Congressmen Reyes and others to Hon. Nancy Pelosi and Hon. Steny Hoyer, Majority Leader, U.S. House of Representatives, April 16, 2010

Congress of the United States
Washington, DC 20515

April 15, 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

Dear Speaker Pelosi:

As you craft supplemental appropriations legislation to fund the operations and provide for the safe return of our service members fighting in Afghanistan and Iraq, we ask you to also consider needed investments in the security of our nation's border with Mexico.

The recent murders of American citizens connected to the U.S. consulate in Ciudad Juarez and the brazen murder of an Arizona rancher on American soil highlight the growing insecurity faced by Americans living along the border with Mexico. Over the past three years, a drug war raging within a stone's throw of American territory has led to the murders of an estimated 15,000 people. Drug cartels now fight each other – and Mexican military and law enforcement with startling ferocity and sophisticated weapons and tactics for control over narcotics distribution, including significant networks inside the United States. In order to ensure the security of Americans, we ask you to include the following items in the upcoming supplemental appropriations bill for fiscal year 2010.

$30 million for the National Guard Counter Drug program. The National Guard Counterdrug Program conducts a full spectrum campaign that bridges the gap between Department of Defense and Non-DoD institutions in the fight against illicit drugs and transnational threats to the homeland. The program contributes military support for local, state and federal Law Enforcement Agencies. The program's goal is to provide the nation with a drug-free, mission-ready force to defend the interests of its citizens at home and abroad. The soldiers and airmen involved in the program work at all levels of government to anticipate, deter, and defeat threats along our border in order to enhance national security and protect our society. We are requesting an additional $30 million for activities along the U.S.-Mexico Border.

$50 million for Operation Stonegarden. Operation Stonegarden provides resources to enhance law enforcement preparedness and operational readiness along the borders of the U.S. The program is designed to promote cooperation and coordination between federal, state, local, and tribal law enforcement agencies in a joint mission to secure the U.S. borders. Since this source of funding is often the only federal resource available to local law enforcement agencies in rural areas, an increase is needed to keep up with the law enforcement demands of the border, especially in a time when we are trying to prevent the spread on violence from Mexico. We are

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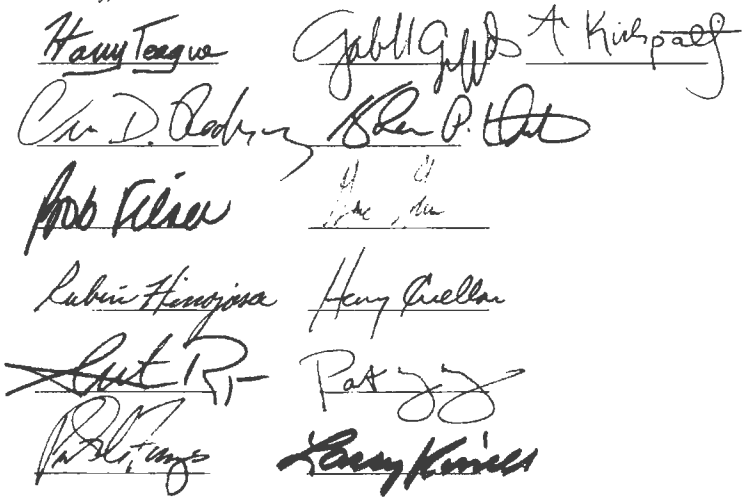
requesting an additional $50 Million in FY10 for Operation Stonegarden for the U.S. Mexico border.

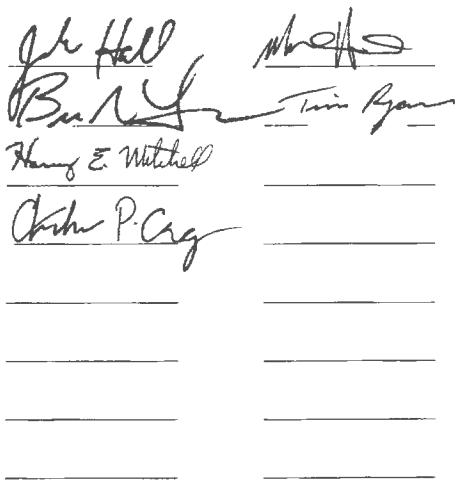
$25 million for the U.S. Border Patrol. The Border Patrol's goal is to establish effective control over America's border with Mexico through the use of personnel, tactical infrastructure, and technology. With assaults against Border Patrol increased from last year's levels and violence raging across the border in Mexico, further investments are needed to equip agents with the tools they need to secure the border and ensure their own safety. Funding will go toward forward operating bases, communications equipment, surveillance equipment, officer support equipment and other resources. We are requesting an additional $25 million for Border Patrol activities along the U.S.-Mexico border.

$32.2 million to hire new Border Patrol agents. CBP is responsible for protecting our nation's borders, and ensuring robust levels of agents in the field is critical to achieving operational control of the border. The recent sharp increase in violence in the border region underscores the dangers faced by agents in the field, and the need for more Customs and Border Protection agents has never been more prevalent. We are requesting $32.2 million for 207 additional Border Patrol agents.

Thank you for your consideration of this critically important request. We look forward to working with you to ensure the security of our borders.

Sincerely,





Congress of the United States
Washington, DC 20515

April 16, 2010

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232 Capitol
Washington, DC 20515

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives
H-107 Capitol
Washington, DC 20515

Dear Madam Speaker and Leader Hoyer:

As the Appropriations Committee drafts the fiscal year 2010 emergency supplemental spending measure, we write to urge the inclusion of funding to support efforts by the United States and Mexico to combat narcotics and organized crime. We have the privilege of representing communities along the U.S.-Mexico Border, and the violence facing Mexico is having a particular impact on our communities and our sister cities as the Mexican government clamps down on criminal organizations.

U.S.-Mexico Security Cooperation

The Merida Initiative, negotiated by the previous Administration and Mexican President Felipe Calderon, was an important step in cooperative efforts to combat illegal drug trafficking and make needed improvements to the Mexican justice system. The Mexican people have shown great resolve in this battle against deeply entrenched criminal elements, and the Mexican government - at all levels - has invested substantial resources to quell lawlessness and restore order. Despite these efforts, which are starting to show some success, a recent upswing in violence demonstrates that immediate attention, in the form of additional resources and a renewed focus on the problems our two nations face, is needed.

This need for further cooperation prompted President Obama to dispatch a delegation of top U.S. officials including Secretary of State Clinton, Secretary of Defense Gates, and Secretary of Homeland Security Napolitano to Mexico City on March 23, 2010 to discuss our shared interest in addressing crime and disrupting the flow of narcotics, weapons, and money. Additionally, President Calderon will meet with President Obama during an official state visit on May 19, 2010. During this visit, the two leaders will focus on further requirements for cooperation and funding to support Mexico's ongoing efforts.

In advance of those discussions, we urge you to consider including funds to meet urgent requirements in the emergency spending bill currently under consideration. As you know, following the March 23 visit, U.S. and Mexican leaders unveiled a framework for an expanded partnership. This four pillar approach includes continuing efforts to fight organized crime and improve justice institutions and adds creating a 21st Century border and building communities better able to resist the influence of cartels. The governments of both nations are working to translate those broad policy goals into concrete programs, and we have encouraged the Obama

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Administration to share their funding priorities with Congress as soon as possible so that these important programs can be included in upcoming spending measures.

In addition to providing resources to support emerging requirements for Mexico, we also urge the Appropriations Committee to consider providing funds for the following areas to support efforts along the U.S.-Mexico border to combat drug trafficking and to aid our border communities, which are directly impacted by the ongoing violence.

Supporting Border Infrastructure and Personnel to Enhance Security and Commerce

Inadequate staffing and outdated infrastructure at our nation's land ports of entry threaten our national security and hinder the flow of trade which is critical to our national economy. The Government Services Administration (GSA) has identified over $5 billion in needed upgrades to our border infrastructure. While building and expanding ports of entry would greatly improve border operations, it is also critical that these inspection lanes are appropriately staffed. To that end, there is a requirement to increase Customs and Border Protection (CBP) personnel by 30 percent nationwide which would augment the force by 5,000 officers, and an additional 350 support personnel and 1,200 agriculture inspection specialists are also needed. These additional positions would not only improve traffic flow at our land ports of entry but would allow for the expansion of CBP efforts to check southbound vehicles as well, a critical component of cooperative security efforts to disrupt the flow of weapons and money to Mexico in support of the drug trade. These proposals are included in the PORTS Act (HR 1655), which Congressman Silvestre Reyes crafted based on his experience as a U.S. Border Patrol Chief and working with border security experts. As you are considering opportunities to enhance our border security and trade, we hope that you and your staff will examine the PORTS Act as a blueprint for modernizing our nation's ports of entry, and we urge the Committee to include funding for much needed border infrastructure modernization and critical personnel in the supplemental spending bill. At a minimum, we request **$70 million** to hire 500 CBP Officers to alleviate the immediate stress at our understaffed ports.

As you know, CBP depends on user fees to cover 30% of officers' salaries. In FY10, CBP has seen a decline in user-fee revenues and by the end of the year estimates a $100 million user-fee revenue shortfall. This drop affects CBP's ability to pay immigration, cargo, and agriculture inspectors, all of whom are critical to our already under-staffed and under-resourced ports of entry. To make up for the shortfall, CBP is drawing from other sources within its budget, draining the budget of vital resources already marked for other purposes. Given the threats facing the nation and our stated goals of protecting our borders and facilitating commerce and trade, we urge you to provide **$100 million** to CBP through the FY10 Supplemental Appropriations Act for approximately 300 CBP officer salaries. This will offset the decrease in user fees and will ensure that CBP officers are compensated for their work without having to siphon from other areas of the agency budget.

Additionally, Operation Stonegarden has provided resources to enhance law enforcement preparedness and operational readiness along the borders of the U.S. This program is designed to promote cooperation and coordination among federal, state, local, and tribal law enforcement agencies in a joint mission to secure U.S. borders. Because this source of funding is often the only federal resource available to local law enforcement agencies in rural areas, an increase is needed to

keep up with the law enforcement demands of the border, especially at a time when we are trying to prevent the spread of violence from Mexico. We request an additional **$50 million** in FY10 for Operation Stonegarden for the U.S. Mexico border.

Increasing Funding to hire Border Patrol Agents and Combat Corruption

Ensuring robust levels of field agents is critical to achieving operational control of the border. We urge you to provide **$32.2 million** for 207 additional Border Patrol Agents to help the agency meet its commitments to secure our borders without straining their existing human resources or having to deplete assets from other areas.

Moreover, at a Senate hearing on March 11, 2010, James Tomsheck, assistant commissioner with U.S. Customs and Border Protection's Office of Internal Affairs, testified that members of Drug Trafficking Organizations have attempted to join the Customs and Border Patrol to corrupt the organization. CBP has the goal of screening all applicants through polygraph testing. However, inadequate staffing hinders the ability of CBP to screen all new employees and conduct re-investigations of existing employees using these tests. Further funding to increase the number of polygraph examiners would enable the agency to reach its goal of requiring all applicants to take a polygraph test before they are hired and allow CBP to conduct re-investigations of current employees. We urge you to provide **$39.6 million** for background investigations, including periodic re-investigations and polygraph capabilities.

Developing the Law Enforcement Communications Capability in Remote Areas Along the Border

Enhancing the communication capabilities of both law enforcement and civilians in remote areas along the border is also a critical need. CBP has an antiquated communications system in certain border sectors, and remote areas along the border do not have communications infrastructure in place. Improvements are needed to foster and enable better communication networks, and we ask that you provide **$200 million** to support communications capabilities in remote areas along the border.

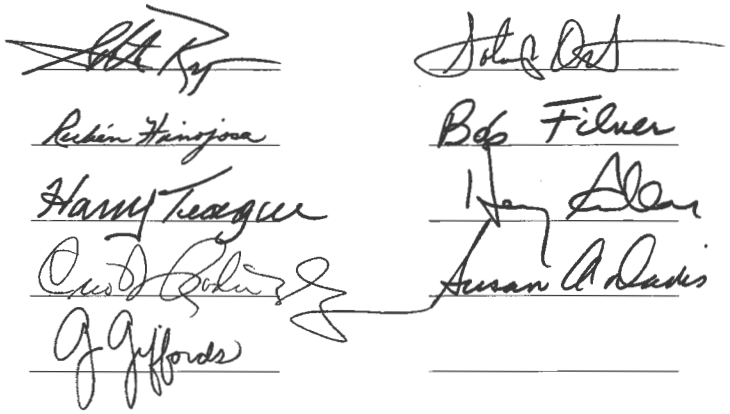
Reimbursing Border Communities for Uncompensated Health Care Costs and Developing Trauma Capability in Ciudad Juarez

As Members representing border districts, we have seen first hand the impact the violence has on communities on both sides of the border. One consequence of the violence in Mexico has been the steady flow of individuals shot or otherwise wounded by drug cartels across the border to U.S. hospitals in search of medical care. Health care providers have been forced to absorb emergency care costs, which continue to rise, leaving local taxpayers to cover the cost. We urge the Committee on Appropriations to provide **$10 million** to compensate border region health care providers as they respond to the effects of ongoing cartel violence in Mexico and to develop trauma capability in Ciudad Juarez.

We greatly appreciate your past support for the Merida Initiative and other cooperative efforts to address drug trafficking and organized crime. We are also grateful for your past support to border

communities so that they can cope with the many challenges they face as they deal with the increasing problems wrought by criminal organizations. Your consideration of these requests is important to further both the Merida Initiative and to address the urgent needs detailed in this letter. The will of governments and communities in the U.S. and Mexico to combat criminal elements is strong and United States Congress must continue to honor that resolve with needed funding to aid those serving on the front lines at this critical juncture.

Sincerely,



cc: Congressman David Obey
Congresswoman Nita Lowey
Congressman Jose Serrano
Congressman David Price

ATTACHMENT 6

Testimony By Steven C. McCraw, Director,

Texas Department of Public Safety, May 11, 2011,"On the Border and in the Line of Fire: U.S. Law Enforcement, Homeland Security and Drug Cartel Violence"

Testimony By Steven C. McCraw, Director, Texas Department of Public Safety , May 11, 2011 ,"On the Border and in the Line of Fire: U.S. Law Enforcement, Homeland Security and Drug Cartel Violence"

Chairman McCaul and Committee members, on behalf of the men and women of the Texas Department of Public Safety, I would like to thank you for the opportunity to appear before you today to discuss a vitally important public safety and national security issue, our unsecure border with Mexico.

Mexican Drug Trafficking Organizations have exploited weaknesses in our border defenses for many years in an effort to exert their dominance over the highly lucrative U.S. drug and human smuggling market and they have evolved into powerful and vicious organized crime cartels that now threaten the domestic security of Mexico. They battle each other and the Government of Mexico to maintain and/or increase their share of the multi-billions of dollars derived from the smuggling of drugs and humans into the U.S., and bulk cash, high value merchandise, stolen vehicles and weapons into Mexico.

They use military and terrorist tactics and weaponry killing over 36,000 people since 2006 and there is no limit to their depravity. They employ horrific tactics to intimidate their adversaries and the public such as decapitations, acid baths, skinning people alive, torture and Improvised Explosive Devices and they have expanded their criminal operations to profit from kidnappings, robberies, human trafficking, extortions and theft. During the past several months we have seen reports of mass graves and self-censorship of the Mexican press. The Mexican Cartels work closely with Texas based and transnational gangs to support their criminal operations on both sides of the border. We continually see multi-ton drug loads seized throughout Texas.

The Mexican Cartels use a mature decision-making process that incorporates reconnaissance networks, techniques and capabilities normally associated with military organizations such as communication intercepts, interrogations, trend analysis, secure communications, coordinated military-style tactical operations, GPS, thermal imagery and military armaments including fully automatic weapons, rocket propelled grenades and hand grenades. They are very adept at corrupting government officials and entire institutions to support their criminal operations undermining the ability of Mexico to address this threat. Recent reports reveal that Mexico has only a 2% criminal conviction rate.

The 2011 GAO Report confirmed what we already knew in Texas, there are insufficient federal resources to secure the Texas/Mexico border with as much as 70% to 90% of the 1,250 miles of border in Texas is only being monitored as opposed to managed or operationally controlled. It is important to note that the men and women of the

Customs and Border Protection Service are dedicated professionals and do an exceptional job with the limited resources they possess. However, there has been a substantial underinvestment in border security for several decades to the benefit of the Mexican Cartels and the detriment of public safety and homeland security.

Texas is a law and order state and there is a high expectation by our citizens that Sheriffs, Chiefs of Police and the Texas Department of Public Safety will work closely together with our federal partners to proactively protect Texas from all criminal and terrorist threats regardless of their origin. When Texas landowners are overwhelmed by drug and human smugglers trespassing and vandalizing their property, they expect a timely law enforcement response and do not want to hear from Sheriffs and the State of Texas that it is not their job.

The State of Texas has already invested over $250 million to enhance border security efforts recognizing long ago its importance to the safety of all Texans. The State adopted a unified command structure to centralize local, state and federal border related intelligence across 53 Texas border Counties and over a hundred local, state and federal agencies to support unified patrol operations on the ground, in the air and on the water. Combining efforts is a force multiplier and provides a more accurate understanding of the current and future border-related threats.

It has also been necessary to increase the state's tactical capability on the border. The Cartels have become increasing confrontational using blocking and chase cars, caltrops to disable patrol cars during high speed pursuits and Cartel boat teams that confront U.S. law enforcement on the U.S. side of the Rio Grande River while they retrieve the drugs from vehicles that have been driven into the Rio Grande River to avoid capture.

In ONE instance, Cartel members threw a Molotov cocktail at Texas Rangers in an attempt to avoid capture and on at least two occasions, Border Patrol Agents were fired upon from Mexico while patrolling the Rio Grande River.

The State of Texas established Texas Ranger Recon Teams augmented with DPS SWAT resources, Texas Military Forces personnel, DPS Aviation and Trooper Strike Teams who work closely with local law enforcement and the Border Patrol to confront the Cartels in high threat areas.

The Committee requested that I provide an assessment of the impact of Cartel-related crime in the Texas border region. To accurately assess the overall criminal impact of an unsecure border on Texas requires the syntheses of several different variables within and outside the border region. For example, if we were to use only Index Crimes as reported through the FBI's Uniform Crime Reporting (UCR) system, it would not include essential variables such as extortions, kidnappings, smuggling incidents, corruption, smuggling-related trespassing and vandalism, arrests of aliens from countries with strong terrorist networks, seizures of Cartel drugs, weapons and bulk cash on the 10 major smuggling corridors throughout Texas, Cartel command and control networks operating in Texas, increases in Cartel-related gang activity, death squad members living in Texas, Cartel-related killings of U.S. citizens in Mexico, Cartel-related violence along the border directed at U.S. law enforcement and the recruitment of Texas children in our border region to support Cartel operations on both sides of the border. These indicators reflect what the Texas Department of Public Safety refers to as "spill over crime" and are discussed below:

Over the last 18 months, six of the seven Mexican Cartels have established command and control networks in Texas cities. This is a three-fold increase.

Within the last year the number of Texas prison gangs who work directly with the Mexican Cartels have increased from four to twelve. This is significant because 62% of prison gang members are incarcerated for violent crimes in Texas and as much as 60% of the criminal activity in some Texas communities is carried out by gangs.

Since January 2010, DPS has identified in Texas 22 murders, 24 assaults, 15 shootings and five kidnappings directly related to the Mexican Cartels.

The Mexican Cartels are recruiting Texas school age children to support Cartel operations. The border region constitutes 9.4% of the state's population and now has over 18.9% of the juvenile felony drug and gang referrals.

The Mexican Cartels are actively recruiting U.S. law enforcement officers to support their smuggling operations. Two South Texas Sheriffs were convicted for Cartel-related corruption and over 70 CBP Agents have been arrested for corruption along the southwest border.

The Mexican Cartels and Texas gangs who support them smuggle and traffic in humans. There have been 480 human trafficking victims over the last four years, 77% were children. Approximately 10% of the calls to the National Human Trafficking Hotline come from Texas, more than any other state.

The FBI in San Antonio reported that there have been 266 kidnappings since 2004, 14 reported in 2004, and 58 in 2009. Kidnappings include Americans kidnapped in Mexico, victims abducted in Texas and taken to Mexico and victims kidnapped in Texas by subjects from Mexico.

Virtual kidnappings and extortions are increasing in Texas. There were 23 reports of attempted extortion in El Paso between August 2009 and September 2010.

The amount of drug and human smuggling and trafficking that occurs in Texas is an essential indicator of the crime impact on the state. A senior DHS official has reported that only 6.5% of the drugs and humans smuggled into the U.S. from Mexico are

interdicted. The Department of Public Safety is not in a position to confirm the percentage cited but it does track interdictions within the border region and seizures beyond the check points.

The 2009 UCR data for the El Paso Police Department shows a reduction in murders; however, the 2011 data from the El Paso Police Department currently shows a 1,200% increase in murders from 2010 to 2011. The Department of Public Safety considers UCR data as only one indicator because of the delay in reporting and the limited incidents it captures.

CBP Agents and Officers continue to arrest illegal aliens along the U.S./Mexico border from countries with a known terrorism presence and 74% of those arrests have occurred in Texas.

A recent federal investigation in Texas underscores the seriousness of this homeland security threat. Between 2006-2008, Dhakane smuggled 300 Somali illegal aliens, moving them through Brazil-Guatemala-Mexico-Texas and California. Dhakane eventually admitted that not only had he worked for many years for the designated terrorist groups AL-ITTIHAD-AL-ISLAMI (AIAI, or Islamic Union Courts/closely affiliated

with al-Shabaab) and the AL-BARRAKAT, he moved at least seven committed Jihadists, most of them over the U.S. southwestern border.

Total amount of Operation Border Star seizures from 2006 to present have an estimated street value of $7,939,824,739.23 (see Exhibit 1).

The Texas Department of Public Safety has seen an increase in Cartel related seizures occurring beyond the check points and along the ten major corridors in Texas.

Cocaine 28% increase

Marijuana 124% increase

Heroin 2,493% increase

Methamphetamine 135% increase

Bulk Cash 168% increase

Weapons 155% increase

When the U.S./Mexico border is finally secured the Mexican Cartels will no longer have access to the billions of dollars they use to undermine the domestic security of Mexico and the safety and security of the citizens of Texas and the nation. Border security can be accomplished with the sufficient will and resources of the federal government working as a team with local and state law enforcement agencies.

http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20McCraw.pdf

ATTACHMENT 7

President Obama, MEMORANDUM FOR THE SECRETARY OF STATE
SUBJECT: Presidential Determination on Major Illicit Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2012

THE WHITE HOUSE
Office of the Press Secretary
For Immediate Release September 15, 2011

September 15, 2011
Presidential Determination
No. 2011-16

MEMORANDUM FOR THE SECRETARY OF STATE
SUBJECT: Presidential Determination on Major Illicit Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2012

Pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228)(FRAA), I hereby identify the following countries as major drug transit or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the Majors List is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (FAA), one of the reasons that major drug transit or illicit drug producing countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced despite the concerned government's most assiduous narcotics control law enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia, Burma, and Venezuela as countries that have failed demonstrably during the previous 12 months to make substantial efforts to adhere to their obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Accompanying this report are justifications for the determinations on Bolivia, Burma, and Venezuela, as required by section 706(2)(B).

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that support for programs to aid Bolivia and Venezuela are vital to the national interests of the United States.

Afghanistan remains the world's largest producer of opium poppy and a major source of heroin. Primary trafficking routes from Afghanistan, where poppy cultivation is still mostly confined to the southern and western provinces, are through Iran to Turkey and Western Europe; through Pakistan to Africa, Asia, and the Middle East; and through Central Asia to the Russian Federation.

Helmand Province remains the largest grower of opium poppy in Afghanistan, but the Provincial Government's innovative Food Zone program, which provides farmers with wheat seed and fertilizer in exchange for a pledge not to grow poppy, coupled with

credible law enforcement, has reduced Helmand's poppy cultivation by a third, to 69,883 hectares in 2009 and even further to 65,043 hectares in 2010. The U.S.-funded Governor Led Eradication (GLE) program has demonstrated progress in Helmand with 2,111 hectares eradicated by the end of May 2011. To date during 2011, a total of 3,827 hectares of GLE has been verified in 17 provinces throughout the country, an increase of more than 45 percent in eradication over the same time last year.

Although the amount of opium poppy cultivated in Pakistan is much less than Afghanistan, the country continues to qualify as a major drug producing country, with an estimated 1,700 hectares of opium poppy under cultivation. The country also remains a major transit country for opiates and hashish for markets around the world and is a transit country for precursor chemicals illegally smuggled to Afghanistan, where they are used to process heroin. Bilateral cooperation between Pakistan and the United States continues to support Pakistan's goal of returning to poppy-free status. United States Government support focuses especially on upgrading the institutional capacity of Pakistan's law enforcement agencies.

A number of indicators qualify the addition of El Salvador and Belize to the Majors List along with the remainder of Central American countries on the isthmus connecting South America to North America.

El Salvador, located between Guatemala and Nicaragua along the Pacific coastline and sharing an eastern border with Honduras, is subject to a number of factors making it vulnerable to the drug trade flowing to the United States from South America. The International Narcotics Control Board describes El Salvador as part of the so-called "northern triangle" with Guatemala and Honduras where "national gangs are forming alliances with international criminal syndicates." According to the most recent U.S. interagency assessment of cocaine flows, the amount of this illicit substance passing through El Salvador destined directly for the United States was estimated at 4 metric tons in 2009.

The most recent U.S. assessment for Belize estimates the flow of drugs destined for the United States through this Central American country on the Caribbean coast at about 10 metric tons. Belize's vulnerability as a south-north avenue for the illegal narcotics trade is also demonstrated by recent drug and weapons seizures in Mexico along the border it shares with Belize. United States officials also report that drug control observers in Belize are increasingly concerned about the presence of drug trafficking organizations, including Los Zetas of Mexico, in the country's border areas and in coastal ports.

Considering the Central American region as a whole, the United States Government estimates that as much as 90 percent of some 700 metric tons of cocaine shipped annually from Colombia and other producing nations intended for the U.S. markets passes through the countries of Central America. This situation is an important element prompting the Central American Citizen Security Partnership, which I announced in March 2011. Through this partnership, the United States is working to refocus the impact of assistance through the Central American Regional Security Initiative (CARSI) and enhance the impact of complementary United States Government non-CARSI citizen safety and rule of law programs. Countries in the region are increasing coordination through the Central

American Integration System, a combined effort to promote citizen security and economic prosperity, including programs aimed at thwarting the drug trade.

International documentation shows continued strengthening of illegal drug trafficking ties between South America and West Africa. West Africa is the closest point to South America for transatlantic purposes, and its close proximity to southern Europe provides a natural gateway to European drug markets. Porous borders, inadequate law enforcement, and corruption create a permissive environment for the illegal drug trade. West African linguistic connections among Brazil, Portugal, and Cape Verde may also contribute to narcotics trafficking. According to the U.S. assessment of cocaine movement, about a third of cocaine destined for Europe passed through West Africa in 2009. The 2011 U.N. World Drug Report also states there are reports that cocaine from Latin America is being stockpiled in some West African countries for future distribution to Europe in smaller quantities.

Despite the range of domestic challenges, including corruption, West African countries have begun to consider narcotics control as a top national security priority. For example, in 2010, Liberian law enforcement successfully uncovered and interdicted a cache of cocaine valued at $100 million. A number of U.S. projects in West Africa are aimed at improving drug interdiction and investigation capabilities. The assistance provided by international donors and organizations to West African governments to improve their counternarcotics capability is increasingly urgent. The United States welcomes fresh impetus in 2010 and 2011 from the international community, especially the United Nations and the European Union, to make Africa a priority for drug-control assistance, to promote and protect the stability and positive growth of countries in Africa.

The stealth with which both marijuana and synthetic drugs such as MDMA (ecstasy) and methamphetamine are produced in Canada and trafficked to the United States makes it difficult to measure the overall impact of this smuggling. However, a special report prepared in May 2011 by the U.S. Drug Enforcement Administration states that "the threat posed by MDMA trafficking from Canada to and within the United States is significant." For example, in April 2011, a seizure of 20 pounds of MDMA from a Canada-based trafficking group was made by U.S. law enforcement in
4
Plattsburg, New York. The United States pledges a more robust engagement and dialogue with Canada to reduce the shared problem of illegal drug trafficking. The results of this bilateral redoubling of drug-control cooperation will be considered in the framework of next year's Presidential Determination.

You are hereby authorized and directed to submit this determination under section 706 of the FRAA, transmit it to the Congress, and publish it in the Federal Register.

BARACK OBAMA

ATTACHMENT 8

Summary, North Texas High Intensity Drug
Trafficking Area Drug Market Analysis, U.S. DOJ,
National Drug Intelligence Center, June 2010

North Texas High Intensity Drug Trafficking Area (HIDTA)

Based on material from the U.S. Department of Justice, National Drug Intelligence Center, North Texas High Intensity Drug Trafficking Area Drug Market Analysis 2010.

The North Texas High Intensity Drug Trafficking Area (HIDTA) region is a major regional- and national-level transportation and distribution area for cocaine, methamphetamine, marijuana, and heroin supplied to U.S. drug markets primarily in the Midwest, Northeast, and Southeast. Mexican drug trafficking organizations (DTOs), which pose the greatest organizational threat to the region, use the Dallas/Fort Worth area as well as the Oklahoma City area to store and distribute illicit drugs destined for drug markets throughout the United States and to consolidate bulk cash drug proceeds smuggled into Mexico.

The following are significant strategic drug threat developments in the North Texas HIDTA:

- Mexican DTOs are expanding their illicit operations into rural areas within and adjacent to the HIDTA region, where law enforcement resources are limited. Consequently, these areas are expected to experience an increase in drug-related criminal activity involving these DTOs.

- Seizures of portable one-pot, or shake-and-bake, methamphetamine laboratories nearly tripled in 2009 from 2008 in the Oklahoma counties of the North Texas HIDTA region, primarily Tulsa County, indicating increased local production of methamphetamine. This trend is expected to increase in the near term.

- Controlled prescription drugs (CPDs) accounted for more than 80 percent of drug-related deaths in the Oklahoma counties in the North Texas HIDTA in 2009, posing a growing threat to the HIDTA region.

- Cannabis cultivation at indoor and outdoor sites is increasing in the North Texas HIDTA region, and outdoor grow operations in the region's rural locations are expanding in size and number.

- Seizures of hydroponic marijuana in the North Texas HIDTA region more than doubled from 2008 to 2009, indicating increased availability of the drug. This trend is expected to continue as demand for high-potency marijuana increases in the region.

The North Texas HIDTA region encompasses 15 northern Texas counties (most of which are located in the Dallas/Fort Worth area, the largest metropolitan area in size and

population in Texas) and 6 Oklahoma counties (including Oklahoma and Tulsa Counties, where the state's two largest cities by population are located).

Approximately 7 million residents, or 28 percent of the Texas population, reside in the Texas portion of the North Texas HIDTA region, and more than 1.7 million residents, or 48 percent of the Oklahoma population, reside in the Oklahoma portion. This large population base is ethnically diverse, particularly in the Dallas/Fort Worth metropolitan area, where more than a million residents are foreign-born and nearly 29 percent of the population is Hispanic. The diverse population of the North Texas HIDTA region enables members of ethnic-based DTOs, criminal groups, and gangs to easily assimilate within communities and divert attention from their drug trafficking activities.

The North Texas HIDTA region's extensive transportation infrastructure and strategic proximity to Mexico contribute to making the region an attractive area for DTOs to conduct their criminal activities. Drug traffickers exploit the region's intricate network of highway systems for the northbound flow of illicit drugs from the Southwest Border to U.S. drug markets and the southbound flow of bulk cash and monetary instruments to drug source areas primarily in Mexico.

Interstates 20, 30, 35, 40, and 44 are main corridors that intersect the HIDTA region and link its primary drug markets (Dallas/Fort Worth and Oklahoma City) to the Southwest Border and to major U.S. markets in the Midwest, Northeast, and Southeast. Air transportation in the North Texas HIDTA region offers additional potential for exploitation by drug traffickers. The Dallas/Fort Worth International Airport (DFW) provides nonstop service to 140 domestic and 40 international destinations. It is the third-busiest airport in the world in terms of aircraft movement and the eighth-busiest in terms of passenger traffic. The HIDTA region also has numerous private airports, buses, trains, and package delivery services that traffickers could exploit to transport contraband.

Although a significant portion of illicit drug shipments transported to the North Texas HIDTA region is intended for local distribution, many drug shipments are stored at stash houses in the area and transshipped to other U.S. drug markets. National Seizure System (NSS) data for 2009 indicate that illicit drugs originating from locations in the HIDTA region were destined for drug markets in states such as Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, South Carolina, and Tennessee.

The attractiveness of the North Texas HIDTA region to DTOs is further enhanced by the region's financial infrastructure, diverse businesses, major industries, and multinational corporations. In 2009, the Dallas/Fort Worth metropolitan area was home to 24 Fortune 500 companies and was the third-highest metropolitan area in the nation based on the number of large corporate headquarters. The presence of these major companies in the metropolitan area contributes greatly to the economic viability of the region. Drug

traffickers seeking opportunities to launder illicit drug proceeds are particularly drawn to the Dallas/Fort Worth area because of its status as a principal banking and financial center in the Southwest.

Dallas and Tarrant Counties also have one of the largest concentrations of licensed firearms dealers in the state. Drug traffickers and other criminal groups take advantage of the many firearms businesses and gun shows in the HIDTA region to purchase firearms for their criminal operations or for smuggling to Mexico on behalf of Mexican DTOs.

The trafficking and abuse of methamphetamine, primarily ice methamphetamine, pose the most significant drug threat to the North Texas HIDTA region. According to the National Drug Intelligence Center (NDIC) National Drug Threat Survey (NDTS) 2010, 49 of the 91 federal, state, and local law enforcement respondents in the North Texas HIDTA region identify either ice methamphetamine (35) or powder methamphetamine (14) as the greatest drug threat to their jurisdictions. Fifteen respondents identify cocaine, predominantly crack cocaine (11), as the greatest drug threat, followed by marijuana, CPDs, and heroin. Most respondents also indicate that each of these drugs, with the exception of heroin, is readily available at moderate to high levels in their jurisdictions. Marijuana, CPDs, and ice methamphetamine are the most widely available and abused drugs in the HIDTA region.

The threat posed by the distribution and abuse of methamphetamine in the region is enhanced by the drug's strong association with property crime and violent crime. Of the 91 law enforcement agencies responding to the NDTS 2010, more than half attribute property and violent crime in their jurisdictions to the distribution and abuse of methamphetamine.

Mexican ice methamphetamine is the dominant form of the drug available in the North Texas HIDTA region, and its availability remains high in most areas, despite a reduction in the quantity of methamphetamine seized in the region in 2009. This reduction in methamphetamine seizure amounts in 2009 from the 2008 total is attributed to the seizure of large amounts of the drug resulting from Project Reckoning in September 2008. Apart from the high seizure total recorded by the HIDTA initiative in 2008, methamphetamine seizure amounts in the region are trending upward overall since 2007. NSS data indicate that seizure amounts of liquid methamphetamine in 2009 totaled 20,817.5 milliliters after none was seized in 2008. Also, locally produced powder methamphetamine is increasingly available in the Oklahoma area of the HIDTA region.

The distribution and abuse of cocaine, both powder and crack, are contributing factors to property crime and violent crime in the region, according to state and local law enforcement respondents to the NDTS 2010. Cocaine is readily available in the region, with a moderate upswing in the demand for powder cocaine noted during the last 6

months of 2009. Crack cocaine conversion, distribution, and abuse are most problematic in low-income urban areas of Dallas, Fort Worth, Lawton, Oklahoma City, and Tulsa.

Marijuana availability has increased in the region, resulting in increased treatment admissions for the drug, primarily in the Oklahoma counties. For example, mentions of marijuana in Tulsa County increased from 310 treatment admissions in 2008 to 531 admissions in 2009. The demand for hydroponically grown marijuana is increasing in the region, particularly in North Texas. North Texas HIDTA task force initiatives seized more hydroponic marijuana in 2009 than in the previous 4 years combined. Additionally, a variety of marijuana called popcorn is available in the Dallas/Fort Worth area. This type of marijuana, which is grown in Chihuahua, Mexico, consists primarily of the buds of the cannabis plant and is slightly greasy or oily to the touch because it is grown under pine trees.

Heroin, primarily Mexican black tar, is widely available, and the demand for the drug remains stable. Heroin-related treatment admissions in the region increased marginally in 2009. In Texas counties, heroin-related treatment admissions increased from 2,697 in 2008 to 2,850 in 2009, and in Oklahoma counties, admissions increased from 148 to 174 during the same period.

The abuse of diverted CPDs--notably hydrocodone, oxycodone, and alprazolam products--poses a serious and growing threat to the entire HIDTA region, but especially to Oklahoma and Tulsa Counties. CPDs are readily available, abused at high levels, and associated with more than 80 percent of the drug overdose deaths (248) in the HIDTA region's Oklahoma counties.

Other drugs such as MDMA (3,4-methylenedioxymethamphetamine, also known as ecstasy), PCP (phencyclidine), and khat pose low threats to the North Texas HIDTA region. However, the availability and abuse of MDMA present a growing concern, specifically in the Dallas/Fort Worth area as well as in Oklahoma City and Tulsa. In addition, seizures of a counterfeit MDMA in both North Texas and Oklahoma have caused further concern. Texas Department of Public Safety (DPS) Crime Laboratory data indicate that in 2009 approximately 30 percent of all evidentiary drug submissions represented as MDMA were BZP (N-benzylpiperazine) and TFMPP (1-(3-triflouromethylphenyl)piperazine). The counterfeit MDMA was marked, embossed, and tinted to simulate MDMA and was distributed as that drug. Increased seizure amounts of PCP in 2009 indicate growing availability of the drug. Law enforcement authorities in Nacogdoches and Angelina Counties in Texas (located near Smith County in the North Texas HIDTA region) report increased demand for PCP in their jurisdictions. Khat seizures totaled more than 89 kilograms in 2009 after none was seized in 2008. Khat use in the Dallas/Fort Worth area is prevalent among immigrants from African countries such as Somalia and Ethiopia.

NDTS data for 2010 cited in this report are as of March 3, 2010. NDTS data cited are raw, unweighted responses from federal, state, and local law enforcement agencies solicited through either NDIC or the Office of National Drug Control Policy (ONDCP) HIDTA program. Data cited may include responses from agencies that are part of the NDTS 2010 national sample and/or agencies that are part of HIDTA solicitation lists.

Project Reckoning was a 15-month multiagency investigation that targeted the Gulf Cartel and its smuggling operations. As part of Project Reckoning, federal, state, and local law enforcement officers (in the jurisdiction of the U.S. Attorney for the Northern District of Texas) conducted Operation Dos Equis and Operation Vertigo, both of which focused on Gulf Cartel members who operated cocaine and methamphetamine trafficking cells in the North Texas area. The two operations resulted in the arrests of more than 30 drug traffickers and the seizure of more than $1 million in cash, 300 kilograms of cocaine, 360 pounds of ice methamphetamine, numerous weapons, and an explosive device. A second phase of Project Reckoning led to the arrests of more than 40 drug traffickers with links to the Gulf Cartel in several states, including Texas and Oklahoma.

BZP is a stimulant that produces euphoria and cardiovascular effects and is approximately 10 to 20 times less potent than amphetamine in producing these effects. BZP tablets, especially those that contain the hallucinogen TFMPP, are often sold as MDMA or promoted as an alternative to MDMA.

Gangs in the North Texas HIDTA region are involved at varying levels in drug trafficking and related criminal activities, such as assaults, home invasions, burglaries, and weapons trafficking. Many of the most active gangs in the HIDTA region are Hispanic street and prison gangs. Some of these gangs are transnational and have foreign-born members who engage in criminal activity on both sides of the U.S.-Mexico border. Transnational gang members generally maintain criminal connections in their native countries and may have some of their criminal activities planned, directed, and controlled by gang leaders in those countries. Members of certain gangs, including outlaw motorcycle gangs (OMGs), engage in weapons smuggling. For example, law enforcement officers in the Dallas area report that members of Bandidos OMG move guns from Dallas into Mexico.

North Texas: A Major Focus in Project Coronado Operation

In October 2009, a law enforcement effort led by the Drug Enforcement Administration (DEA) resulted in the arrests of more than 300 individuals in 19 states as part of Project Coronado, a multijurisdictional investigation that targeted methamphetamine and cocaine trafficking cells associated with La Familia Michoacana (La Familia). La Familia is a significant Mexican DTO operating in the North Texas HIDTA region, notably the Dallas/Fort Worth area. La Familia's organizational components in and around the Dallas/Fort Worth area are highly structured, well-organized, and primarily responsible

for the majority of ice methamphetamine and significant amounts of marijuana trafficked in the North Texas area. Some cell members who work for the DTO use members of the Tango Blast prison clique and the Mexican Mafia prison gang for enforcement, protection, and the transportation of illicit drugs. Arrests in conjunction with Project Coronado in the North Texas HIDTA region occurred in the Dallas/Fort Worth (84) and Tulsa (8) areas. The Dallas/Fort Worth area served as a critical distribution hub for La Familia and a transshipment point for drug shipments to other U.S. cities in states such as Arkansas, Georgia, Illinois, Minnesota, and Mississippi. Cell members received drug shipments, used stash houses to store the drugs and cash proceeds, and acted as intermediaries and brokers to negotiate the acquisition, price, delivery, and payment for the drugs. They used vehicles to transport the bulk currency to supply sources in Michoacán, Mexico, secreting the funds in false compartments, gas tanks, or other containers in vehicles. Project Coronado also resulted in the arrests of individuals engaged in firearms smuggling for La Familia.

Table 4. Active Hispanic Gangs in the Major Drug Markets of the North Texas HIDTA Region, 2009

City	Gang	Type
Dallas	Eastside Homeboys	Street
	Latin Kings	Street
	Mexicles	Prison
	Mexikanemi	Prison
	Tango Blast	Prison clique/Street
	Texas Syndicate	Prison
	Varrio North Side (VNS)	Street
	West Side Gator Boys	Street
Fort Worth	28th Street	Street
	Fantasmas	Street
	Sur-13	Street
Oklahoma City	Eastside Vatos Sureños (EVS)	Street
	Grande Barrio Centrale (GBC)	Street

City	Gang	Type
	Juaritos (or Grande Barrio Loco (GBL))	Street
	South Side Locos (SSL)	Street
Tulsa	East Side Longos	Street
	Latin Kings	Street
	Ñeta	Prison/Street
	Norteños	Street
	Sureños	Street

Transnational Gang Members Arrested in Dallas/Fort Worth Area

In June 2009, U.S. Immigration and Customs Enforcement (ICE) agents and other law enforcement officers arrested 81 transnational gang members, their associates, and immigration status violators during a 6-day Operation Community Shield[2] action in the Dallas/Fort Worth area. The operation targeted foreign-born, violent gang members and associates in the North Texas cities of Arlington, Dallas, Carrollton, Fort Worth, Irving, Lewisville, and Plano. Gang members arrested were from Mexico, El Salvador, Honduras, and Laos and belonged to the following street gangs: 15th Street, 18th Street, 28th Street, 68th Street (Nuevo Laredo, Mexico), Aryan Brotherhood, Butter Bean Boys, Crips, East Side Homeboys, Easy Riders (Los Angeles), Five Deuce Crip, How High Crew, Mara Salvatrucha (MS 13), Northside Locos, Laotian Oriental Killer Boyz, Mexican Clan Locos, Norteños, Southside, Sureños, Tango Blast, True Bud Smokers, Trueman Street Blood, Varrio Diamond Hill, and Varrio Northside. Fifty-two of those arrested were active gang members and 14 were gang associates. Individuals associated with the Los Zetas criminal organization were also arrested during this operation. Many of those arrested had previous criminal convictions that included weapons charges, aggravated assault with a deadly weapon against a peace officer, engaging in organized criminal activity, burglary of a vehicle, and robbery.

Texas DPS authorities indicate that during 2009, Mexican traffickers transported liquid methamphetamine to the Dallas/Fort Worth area; however, no seizures of this form of the drug have been recorded since late 2009. Texas DPS officers note that quantities of acetone have been discovered in some methamphetamine stash houses in the

Dallas/Fort Worth area. Traffickers convert or "recrystallize" the liquid compound to high-purity (98%) ice methamphetamine crystals or shards using an acetone-wash process. Although no liquid methamphetamine has been seized in the HIDTA region since the last quarter of 2009, there is still reporting that acetone is being stored in stash houses in the area, leading to an intelligence gap regarding the purpose of this chemical.

Law enforcement officials in the region report an increase in the number of indoor cannabis grow operations, particularly those producing hydroponic marijuana. The majority of indoor hydroponic grows in the HIDTA region are found in rental units or homes in residential areas, primarily in the Dallas/Fort Worth area. Grow operators are employing techniques such as using stolen electric meters during the production process to avoid detection of excessive electricity use. In the first quarter of 2010, law enforcement officers in Lubbock County, Texas, reported a noticeable increase in the cultivation of hydroponic cannabis in dorm rooms and apartments.

Law enforcement officials also report an increase in the number of outdoor grow operations in the North Texas HIDTA region, particularly in the heavily wooded rural areas of the region. In July 2009, law enforcement officers discovered several large cannabis grow operations in Ellis and Navarro Counties, resulting in the seizure of more than 16,000 plants. Officers in Oklahoma discovered other large grow operations in a remote section of the Kiamichi Mountains situated in southeastern Oklahoma across the border from Texas. Evidence at many of the grow sites in the region indicates that the principal growers are Mexicans, usually illegal nationals.

Transportation

Mexican traffickers smuggle multikilogram to multiton quantities of illicit drugs--primarily cocaine, ice methamphetamine, heroin, and marijuana--to the North Texas HIDTA region, either directly from Mexico through major ports of entry (POEs) along the U.S.-Mexico border (such as Laredo, El Paso, McAllen, or Brownsville) or other, smaller Southwest Border towns, or through California and Arizona. Traffickers continually adjust their smuggling routes through the region to avoid interdiction on the major highways in the North Texas HIDTA region. For example, law enforcement in Terry County (which is directly southwest of Lubbock County) reports that traffickers are avoiding concentrated law enforcement interdiction efforts along Interstates 10, 20, 27, and 40 and shifting to less traveled highways such as U.S. Highways 62, 380, and 385 to transport drug shipments from western states to the North Texas area.

Drug shipments that arrive in the HIDTA region are often repackaged for distribution to drug markets in the region and throughout the United States. NSS data indicate that seized drug shipments originating in the North Texas HIDTA region in 2009 were destined primarily for drug markets in southeastern and midwestern states, including

Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Kansas, Kentucky, Michigan, Mississippi, Missouri, North Carolina, Tennessee, and Virginia.

Aviation smuggling is increasing in the Dallas/Fort Worth area. ICE agents indicate that traffickers are transporting cocaine and marijuana as well as illegal aliens by air from the Dallas/Fort Worth area to other transshipment locations, such as Atlanta. Much of this activity occurs at private airports through the use of private pilots referred to as mercenary pilots.

Distribution

Dallas/Fort Worth

Mexican DTOs are the principal wholesale distributors of methamphetamine, cocaine, heroin, and marijuana in the Dallas/Fort Worth area of the HIDTA region, while Asian DTOs, primarily Vietnamese, are the main distributors of MDMA and hydroponic marijuana. Local independent distributors and members of street, prison, and outlaw motorcycle gangs are the primary midlevel and retail-level drug distributors operating in the Dallas/Fort Worth area. African American and Hispanic street gangs are principal retail-level distributors of illicit drugs in the North Texas HIDTA region. African American drug traffickers in the Dallas/Fort Worth area are increasingly distributing MDMA.

Oklahoma City

Mexican DTOs and criminal groups are significant suppliers of wholesale quantities of illicit drugs in Oklahoma City. Some members of African American and Hispanic street gangs, particularly South Side Locos and Juaritos, work with Mexican DTOs to distribute methamphetamine, marijuana, and cocaine in Oklahoma City at the retail level. African American street gangs also distribute MDMA and codeine-laced cough syrup to young abusers.

Drug-Related Crime

Methamphetamine is the drug that most contributes to property crime and violent crime in the HIDTA region. According to NDTS 2010 data, 56 of the 91 state and local law enforcement respondents in the North Texas HIDTA region identify methamphetamine as the drug most associated with property crime, and 48 respondents identify methamphetamine as the drug most associated with violent crime.

Abusers of methamphetamine and other drugs commit crimes to obtain money to support their drug addictions, including stealing property, committing identity theft and credit card fraud, and other criminal activity. Some gangs in the HIDTA region have a propensity for violence, such as Tango Blast in Dallas and South Side Locos in Oklahoma

City, and some gangs also commit auto theft, burglary, illegal immigrant smuggling, home invasion robbery, kidnapping, and murder.

Gang members (such as members of the East Side Homeboys street gang in Dallas) arrested on drug trafficking violations in the HIDTA region are frequently in possession of firearms, which they typically carry to protect their drug supplies or defend their distribution territories. They also use the firearms for intimidation or retaliation purposes and, at times, against law enforcement. Many gang and criminal group members obtain firearms by burglarizing area businesses, private homes and vehicles, or through straw purchasers.

Mexican criminals and trusted members of some gangs in the North Texas HIDTA region smuggle stolen and illegally purchased guns, particularly assault rifles, to Mexico for use by DTO enforcers. For example, in October 2009, gun smugglers in the Dallas/Fort Worth area were arrested in conjunction with Project Coronado. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) participated in the Project Coronado effort, targeting firearms smugglers working on behalf of La Familia. Six of the arrests occurred in Fort Worth, where a weapons trafficking ring had recruited and paid individuals to act as straw purchasers to buy firearms. After acquiring a sufficient number of firearms, the traffickers transported them to a ranch in Cleburne, Texas, where the guns were stored prior to shipment to the Southwest Border area and eventually to Mexico.

Illicit Finance

Millions of dollars in illicit drug proceeds are smuggled in bulk to Mexico from the HIDTA region for eventual laundering or repatriation. Drug traffickers routinely use the region, particularly the Dallas/Fort Worth area, as a staging location for bulk cash and monetary instruments that they generate through their illicit activities. Internal Revenue Service authorities indicate that some drug traffickers have used color coding to mark packages in bulk currency shipments to identify from where the proceeds have come or to which criminal groups the proceeds should be delivered.

Traffickers in the Dallas and Oklahoma City areas are also being seen in possession of stored value cards, such as gift cards. Traffickers are transporting the stored value cards to Brownsville or other Southwest Border locations. There the transporter withdraws the money from the cards and wires the funds to a recipient in Mexico or another foreign location.

Stored Value Cards

Stored value cards are prepaid debit cards that use magnetic stripe technology to store information about funds that have been prepaid to the card. Payroll cards, government benefit cards, gift cards, and telephone cards are examples of stored value cards. These virtual money cards can be accessed through the Internet and often allow holders to

transfer money values anonymously without being subject to the same controls required of institutions that deal with credit and debit cards. Legitimate and criminal users of these virtual money cards store funds on the cards in amounts not exceeding the dollar limit set by the issuing authority; however, a complicit issuing authority can waive the dollar limit, making these cards attractive to money launderers. In addition, the owner of a stored value card can authorize another individual to withdraw funds without requiring any type of identification at the time of the transaction.

Money launderers also use wire transfer services to move illicit drug proceeds from the Dallas/Fort Worth area to banks and other financial transaction points in Mexico. Money launderers are facilitating wire transfers by using "straw men" to conceal the identity of the transferring party. Also in the Dallas/Fort Worth area, members of Mexican drug trafficking cells are buying properties, renovating them, and then selling them legitimately and sending the profits to Mexico.

NDIC CONCLUSIONS

NDIC analysts expect that Mexican DTOs will continue to dominate wholesale drug distribution in and from the North Texas HIDTA region and further exploit the Dallas/Fort Worth area as a major staging area for their drug trafficking and bulk currency consolidation operations. No other trafficking group appears to have the sources of supply or organizational structure to challenge them.

Methamphetamine, primarily Mexican ice methamphetamine, will remain the most significant drug threat in the HIDTA region as distributors and abusers continue to commit violent crimes and property crimes. Although Mexican methamphetamine will remain the most available type of the drug, it is expected that the production and availability of one-pot, or shake-and-bake, methamphetamine will increase in the Oklahoma areas of the HIDTA region and expand to some areas of North Texas.

The increasing abuse of CPDs in the North Texas HIDTA, particularly in the HIDTA's Oklahoma counties, will result in more drug-related deaths. NDIC analysts expect indoor and outdoor cannabis grow operations to increase in number throughout the HIDTA region. DTOs will exploit the region's rural wooded areas to situate larger and more sophisticated outdoor cannabis grow sites and, thereby, avoid the risk of having their marijuana shipments interdicted along the Southwest Border. It is expected that Mexican traffickers will exploit the rising demand for hydroponic or high-potency marijuana and the high profit margins associated with the drug to develop indoor grow operations in the North Texas HIDTA region.

Attachment 9

MAPS Depicting Hemispheric, U.S. and Texas Drug Trafficking Patterns & Trends

U.S. Department of Justice, National Drug Threat Assessment 2011

A. Cities Reporting Drug Trafficking Organizations Cartel Territory and Drug Routes – Rand 2011

B. Drug Routes - Mexico to U.S. Border Composite – COLGEN 2011

C. Flow of Transnational Crime and Violence - Composite – COLGEN 2011

D. US Dept. of Justice, National Drug Threat Assessment:

U.S. Internal Cocaine Movement, FY2008–FY2010
U.S. Internal Heroin Movement, FY2008–FY2010
U.S. Internal Marijuana Movement, FY2008–FY2010
U.S. Internal MDMA Movement, FY2008–FY2010
U.S. Internal Methamphetamine Movement, FY2008–FY2010


Cities Reporting the Presence of Mexican Drug Trafficking Organizations
Source: Federal, State, and Local Law Enforcement Reporting January 1, 2008 through September 30, 2008


UNITED STATES
MEXICO
San Diego
Tijuana
Mexicali
Douglas
Nogales
Agua Prieta
El Paso
Juarez
Pacific Ocean
Gulf of Mexico
Nuevo Laredo
Laredo
McAllen
Reynosa
Culiacan
Mazatlan
Tampico
Puerto Vallarta
Mexico City
Veracruz
Cancun
Merida
Sea
Lazaro Cardenas
Acapulco
from China
from Colombia
Venezuela, Brazil
Tijuana cartel
Gulf cartel
Juarez cartel
Sinaloa Federation
Territories in dispute
Cocaine traffic
Ephedra traffic
Marijuana and meth traffic
All drug traffic



Colgen Composite 2011



Colgen Composite 2011

Figure 2. Internal Cocaine Movement, FY2008–FY2010



Cocaine

Southern California and South Texas are the primary entry points for cocaine, much of which is transported toward heavily populated cities in the eastern United States. Atlanta, in particular, has emerged over the past several years as a key wholesale cocaine distribution hub. Significant quantities of cocaine smuggled into California transit the Pacific Region for Canada. Colombian and Dominican TCOs still use maritime and commercial air conveyances to smuggle cocaine into New York City and Miami for distribution in some East Coast locales, but cocaine smuggled across the Southwest Border is increasingly being distributed in these markets.

Figure 3. Internal Heroin Movement, FY2008–FY2010



Heroin

Mexican heroin enters the country primarily at crossing points in southern California, South Texas and, increasingly, Arizona. It is largely destined for western states, where it is preferred, but it is simultaneously being moved to eastern markets on a smaller but increasing scale. An increasing amount of South American heroin available in the United States is smuggled across the Southwest Border and subsequently shipped to East Coast markets, where it is sold along with South American heroin smuggled into Chicago, New York City, Miami, and other East Coast metropolitan areas by Colombian and Dominican TCOs.

Figure 4. Internal Marijuana Movement, FY2008–FY2010



Marijuana

Mexico-produced marijuana enters the country primarily in Arizona, California, and South Texas, while high-potency Canadian marijuana is usually smuggled through and between POEs in Washington, Michigan, New York, and Vermont. Both forms of marijuana are distributed nationally. Similarly, domestically produced marijuana is transported from grow sites to markets nationwide.

Figure 5. Internal MDMA Movement, FY2008–FY2010



MDMA

MDMA is generally transported from POEs in Washington, Michigan, New York, and Vermont to markets throughout the United States.

Figure 6. Internal Methamphetamine Movement, FY2008–FY2010



Methamphetamine

Mexican traffickers supply drug markets in the western United States and, on a smaller but increasing scale, eastern drug markets with methamphetamine smuggled over the Southwest Border and with methamphetamine produced in California superlabs.[n] Methamphetamine crossing the Southwest Border is primarily smuggled through California and South Texas POEs. Methamphetamine produced in small domestic laboratory operations is usually consumed locally.

n. Superlabs are laboratories capable of producing 10 or more pounds of methamphetamine in a single production cycle.

ATTACHMENT 10

Fact Sheet:

Cartel-Related Crime, Texas Department of Public Safety,
July 15, 2011

Fact Sheet: Cartel-Related Crime

Updated July 15, 2011

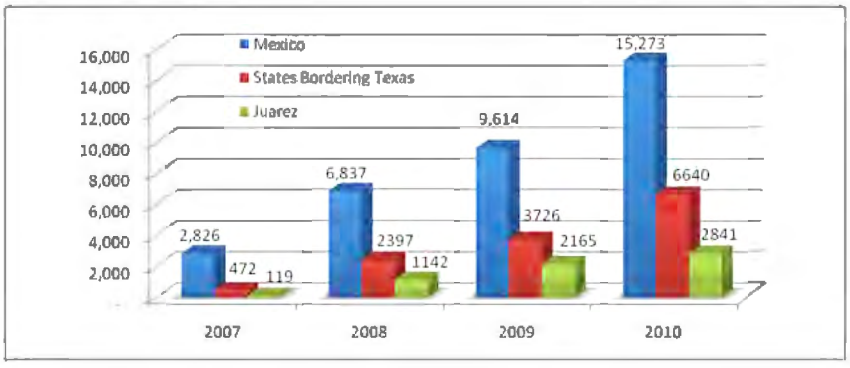
Texas Department of Public Safety

This fact sheet contains information regarding criminal activity in Texas and in Mexico related to cartels and cartel associates. It also contains data regarding crimes that may be associated with cartels but for which a cartel connection is not explicit. **Significant quantitative information is highlighted in bold.** Endnotes provide additional source information.

Violence in Mexico

(U) Between December 2006 and December 2010, **there were 34,612 organized crime-related homicides in Mexico,** according to official data released publicly by the government of Mexico; we are aware of no official data released publicly since January 2011. Since June 2011, unofficial news media accounts and peace advocates have stated that **approximately 40,000 people have died** since December 2006.[1] An unofficial tally of cartel-related homicides maintained online by an independent website **has surpassed 45,000**;[2] this tally appears to be based on multiple sources, including uncorroborated news media reports, and the time period for this tally is unclear.

(U) Much of the violence in Mexico has been increasingly concentrated in close proximity to Texas. The graph below shows the number of homicides in Mexico, in the four Mexican states bordering Texas, and in Ciudad Juarez, based on an analysis of information contained in the Government of Mexico's publicly accessible database of organized crime-related homicides. **The percentage of organized crime-related homicides that occurred in the states bordering Texas was 17 percent in 2007, 35 percent in 2008, 39 percent in 2009, and 43 percent in 2010. (Government of Mexico)**



(U) While the violence in Ciudad Juarez has represented a significant portion of the violence along the Texas border since 2008, the ongoing conflict between the Gulf cartel and Los Zetas appears to have prompted a significant and sudden increase in violence in Tamaulipas state in 2010; while **the number of homicides in Tamaulipas was 80 in 2007, 96 in 2008, and 90 in 2009, the number grew to more than 1,200 in 2010,** according to information contained in the Government of Mexico's publicly accessible database of organized crime-related homicides.

(U) A review of information from multiple sources shows that **224 decapitations have been reported in Mexico** since January 2009, according to a compilation and analysis of information conducted by the JOICs. These include 8 reported in 2009, 152 reported in 2010, and 64 reported from January to June 2011. **(BSOC and JOICs)**

(U) The body of **one victim who was kidnapped from his home in Horizon City, Texas, in 2009 was found in Ciudad Juarez with his hands cut off**; the kidnappers transported him to Mexico, killed him and mutilated his body in retaliation for the loss of a marijuana load seized at the Sierra Blanca checkpoint, according to a DEA press release announcing the suspects' indictment.[3] **(DEA)**

(U) At least **8 VBIED incidents have been reported in Mexico** since July 2010, according to a review of information from multiple sources. These include all reports of IEDs in vehicles, including seven detonations and one device that was discovered before it detonated. **(ICT)**

Violence against Americans in Mexico

(U) The U.S. State Department reports that **341 American citizen deaths in Mexico were classified as homicide (310), drug-related (15), or execution (16)** between January 1, 2006, and December 31, 2010, the most recent date for which information is available. Of these, **47 deaths occurred in 2006, 38 in 2007, 62 in 2008, 81 in 2009, and 113 in 2010**, according to information contained in the State Department's publicly accessible database of American citizen deaths abroad. **(U.S. State Department)**

(U) Much of the violence affecting American citizens in Mexico is increasingly concentrated in the four Mexican states adjacent to Texas. **The percentage of homicides of Americans that occurred in these states was 34 percent in 2006, 18 percent in 2007, 40 percent in 2008, 41 percent in 2009, and 44 percent in 2010**, according to information contained in the State Department's publicly accessible database of American citizen deaths abroad. **(U.S. State Department)**

(U) A July 2010 survey of U.S. companies operating in Mexico conducted by the U.S. State Department's Overseas Security Advisory Council (OSAC) found that **45 percent of the 220 organizations that responded had beeu impacted by violent crime,** including kidnappings, armed robbery, truck hijacking, and other violent crimes. The survey also found that 74 percent of the respondents have implemented travel restrictions, while 15 percent have deferred near-term investment and/or expansion initiatives in Mexico due to cartel violence. **(OSAC, Mexico Security Benchmarking Survey Results)**

(U) Mexican government statistics released to the press show that deaths of innocent bystanders from drug-related violence nearly tripled in 2010 compared to 2009. The Mexican Attorney General's Office (PGR) reported in January 2011 that **166 innocent bystanders died from drug-related violence in 2010, compared to only 61 in 2009**.

(U) The U.S. Consulate in Monterrey became a partially unaccompanied post in September 2010, where no minor dependents of U.S. government employees are permitted to remain in the city. The decision was based on the August 2010 shooting near the American Foundation School and the high kidnapping rate in the area.[4] The State Department urges Americans to defer unnecessary travel to multiple places in Mexico, including the entire state of Tamaulipas and parts of Chihuahua and Coahuila states; these states border Texas. U.S. Government employees are prohibited from entering parts of Nuevo Laredo.[5]

Homicides in Texas

(U) The BSOC and ICT have received reports of **28 homicides, involving 30 victims, in Texas** that are connected to Mexican cartels or Texas-based gangs connected to Mexican cartels since 2009.

Shootings from Mexico to Texas

(U) The BSOC and ICT have received reports of **8 incidents in which bullets were fired from Mexico and crossed into Texas** since 2009. This does not include incidents in which shots were fired at law enforcement in Texas.

Assaults on Law Enforcement

Note: CBP provided the following information with the request that DPS notify CBP of any use or reference of the information by DPS.

Caltrop Incidents

(U) Since 2008, the BSOC has received reports of 72 caltrop incidents. **(BSOC)**

Caltrops	*Incidents*
Calendar Year	*Number (#)*
2008	1
2009	18
2010	37
2011 (Jan 1-Jun 30)	16
Total	**72**

Law Enforcement Pursuits

(U) Nearly one fourth of all Texas Highway Patrol pursuits occur in the 14 counties along the border with Mexico. From January 2006 to May 2011, **THP has conducted 4,810 pursuits in Texas, including 1,159 pursuits in the counties that border Mexico.** These counties represent approximately 9.7 percent of the population in Texas, but the **pursuits in these border counties accounted for 24.1 percent of all pursuits** conducted by THP during this time period. Of the 1,159 pursuits in border counties, 684 (59 percent) occurred in Hidalgo county. **(THP)**

Year	THP Pursuits in All Counties	THP Pursuits in Border Counties	Percent
2006	889	188	21.15
2007	906	216	23.84
2008	985	266	27.01
2009	896	209	23.32
2010	833	207	24.85
2011 (YTD)	301	73	24.25
Total	4,810	1,159	24.1

(U) In a June 9, 2011, decision, the U.S. Supreme Court held in *Sykes v. United States* that felony vehicle flight, as proscribed by Indiana law, is a violent felony for purposes of the Armed Career Criminal Act, 18 U.S.C. §924(e).[6] **(U.S. Supreme Court)**

Splashdowns

(U) Since October 2009, the BSOC has received reports of 58 splashdown incidents. **(BSOC)**

Kidnapping

Note: The FBI will provide updated kidnapping data on Monday, July 18, along with permission to publicly release some of the summary numbers. As of July 15, the FBI has not provided updated information or permission to publicly release the data.

Extortion

Note: The FBI will provide updated extortion data on Monday, July 18, along with permission to publicly release some of the summary numbers. As of July 15, the FBI has not provided updated information or permission to publicly release the data.

(U) A July 2010 survey of U.S. companies operating in Mexico conducted by the U.S. State Department's Overseas Security Advisory Council (OSAC) found that **29 percent of the 220 organizations that responded had experienced acts of extortion** in Mexico. **(OSAC, Mexico Security Benchmarking Survey Results)**

Human Trafficking and Human Smuggling

(U) Mexico's National Human Rights Commission (CNDH) documented **214 kidnapping incidents involving 11,333 victims that occurred in Mexico during the six-month period from April to September 2010**, according to a February 2011 report published by CNDH on migrant kidnappings in Mexico.[7] The report was based on victim descriptions of the incidents and other sources. Most of the victims were Central American migrants transiting Mexico en route to the United States. A previous CNDH report stated that ransom payments for kidnapped migrants averaged $2,500 per victim, and it calculated that **the kidnapping of migrants could generate $25 million in a six month period.** Federal security spokesman Alejandro Poire has stated that CNDH data on kidnappings is inconsistent with the Mexican government's data. **(CNDH)**

(U) The National Human Trafficking Hotline (NHTH) receives between 5,500 and 7,500 calls each year; approximately **10 to 12 percent of the calls originate in Texas**, making Texas the number one state in the number of NHTH calls received, according to the Texas Human Trafficking Prevention Task Force (THTPTF) report published in January 2011.[8] **(Texas Human Trafficking Prevention Task Force 2011 report)**

(U) Between January 1, 2007, and January 13, 2011, HTRS data and the data collected by the Innocence Lost task forces show that **369 children have been identified as victims who were trafficked in Texas. (Texas Human Trafficking Prevention Task Force 2011 report)**

Victims younger than 18 years of age	January 1, 2007 – January 13, 2011
International – Labor	2
Domestic – Labor	1
International – Sex	26
Domestic – Sex	188
Unknown Origin – Sex	34
Foreign – Labor and Sex	8
Domestic – Labor and Sex	0
Unknown – Labor and Sex	1
Innocence Lost – Sex (International and Domestic)[16]	109
TOTAL	**369**

(U) Based on information entered into Human Trafficking Reporting System (HTRS) by the four Texas-based federally-funded task forces, **since January 1, 2007, 554 human trafficking investigations led to the arrest of 132 suspects.** Ultimately, 113 of those suspects were indicted. Of those, 22 suspects were charged with violations of federal law, and 72 with state law violations. Of the 72 suspects charged with violating state law, 15 were charged with human trafficking, 24 were charged with prostitution-related charges, 15 were charged with rape, 7 were charged with kidnapping, 8 were charged with assault, and the remaining 3 were charged with pandering. In total, 29 suspects were convicted of a human trafficking-related crime. **(Texas Human Trafficking Prevention Task Force 2011 report)**

(U) Since 2007, HTRS data indicates that **480 human trafficking victims have been reported in Texas.** Of those reported Texas victims, HTRS indicates that 189 were not United States citizens, while 220 victims were Americans who were trafficked domestically. The remaining 71 victims' country of origin is unknown. **(Texas Human Trafficking Prevention Task Force 2011 report)**

(U) **Sex trafficking in the five most populous counties in Texas could generate over $60 million every year**, according to the THTPTF 2011 report. This estimate was based on calculation of a formula included in a 2008 report by the National Opinion Research Center at the University of Chicago,[9] which was produced with funding by the U.S. DOJ. **(Texas Human Trafficking Prevention Task Force 2011 report)**

Criminal Aliens in Texas

(U) Texas registered **89,810 Alien IDENT Matches through Secure Communities** between October 27, 2008, and May 31, 2011; these include Level 1, Level 2, and Level 3 offenses. These matches account for **15.8 percent of all matches nationwide** during this time period. Texas also registered **28,601 removals and returns, which represents 24.8 percent of all removals and returns nationwide** during this time period**. (ICE, Secure Communities)**

Interoperability Statistics: U.S. States
(From October 27, 2008 through May 31, 2011)

State	Activation Date	[redacted]	Alien IDENT Matches*			Administratively Arrested or Booked into ICE Custody**	Removals and Returns**				
			LESC L1	LESC L2/3	Total	[redacted]	L1	L2	L3	Non-Criminal Immigration Violator	Total
TX	10/27/08	[redacted]	15,877	73,933	89,810	[redacted]	7,110	4,822	10,808	5,861	28,601
Total	10/27/08	[redacted]	94,309	473,070	567,379	[redacted]	29,856	16,907	35,702	32,931	115,396

(U) Of the 155,940 inmates incarcerated in TDCJ on May 31, 2011, the **number of inmates documented by TDCJ as illegal aliens was 6,928, accounting for 4.44 percent of the total TDCJ population. (TDCJ)**

Illegal Alien Offense of Record	*May 31, 2011*	*Percent of Total*
Offense	*Number (#)*	*Percent (%)*
Robbery	980	14.15%
Sexual Assault Against a Child	958	13.83%
Homicide	946	13.65%
Assault/Terroristic Threat	932	13.45%
Drug Possession	549	7.92%
DWI	482	6.96%
Drug Delivery	482	6.96%
Burglary	374	5.40%
Sexual Assault	355	5.12%
Sexual Offense Against a Child	329	4.75%
Kidnapping	103	1.49%
Other	438	6.32%
Total	**6,928**	**100.00%**

(U) Of the 6,928 illegal aliens in TDCJ, 912 have been documented as confirmed or suspected members of a Security Threat Group, accounting for **13.2 percent of all illegal aliens incarcerated**. By contrast, **only approximately 7.5 percent of the total TDCJ population are confirmed or suspected STG members. (TDCJ)**

Illegal Alien STG Affiliation	*May 31, 2011*	*Percent of Total*
STG	*Number (#)*	*Percent (%)*
Partido Revolucionario Mexicanos	313	34.32%
Mexicles	117	12.83%
Tango Houston	78	8.55%
Mexican Mafia	69	7.57%
Texas Syndicate	49	5.37%
Barrio Azteca	38	4.17%
Tango Dallas	35	3.84%
Tango Valluco	24	2.63%
Hermanos De Pistoleros Latino	22	2.41%
Mara Salvatrucha	20	2.19%
Other STG	76	8.33%
Unknown STG	71	7.79%
Total	**912**	**100.00%**

Enterprise Investigations

(U) DPS CID reports **12 gang enterprise investigations** (7 Tier 1 and 5 Tier 2; 10 open and 2 closed), and **26 DTO enterprise investigations** (14 open and 12 closed). Most of these investigations are joint/multi-agency investigations; however, the cases listed are those in which CID is the lead or a major contributor. This information is since January 2010, which is when CID began specifically tracking these types of cases. Closed cases are those in which a significant majority of the targets (80-100%) have been indicted or arrested, and the criminal enterprise has been rendered ineffective in its current form. **(CID)**

Region 1 - Dallas
Gang Investigations
Tier 1 Gangs – 0
Tier 2 Gangs – 2 – (ABT, Bandidos)
Cartel Related DTO Investigations
Open – 4
Closed – 3

Region 2 - Houston
Gang Investigations
Tier 1 Gangs – 2 (Tango, Mexican Mafia)
Tier 2 Gangs – 2 – (MS-13, ABT)
Cartel Related DTO Investigations
Open – 2
Closed – 2

Region 3 - McAllen
Gang Investigations
Tier 1 Gangs – 2 (Texas Syndicate, Mexican Mafia)
Cartel Related DTO Investigations
Open – 2
Closed – 2

Region 4 – El Paso
Gang Investigations
Tier 1 Gangs – 1 (Barrio Azteca)
Cartel Related DTO Investigations
Open – 1
Closed – 2

Region 5 – Lubbock
Gang Investigations
Tier 1 Gangs – 0
Tier 2 Gangs – (ABT – closed)
Cartel Related DTO Investigations
Open – 2

Region 6 – San Antonio
Gang Investigations
Tier 1 Gang – 1 (Mexican Mafia) (open)
Tier 1 Gang – 1 (Texas Syndicate) (Closed)
Cartel Related DTO Investigations
Open – 3
Closed - 3

Juvenile Recruitment by Cartels and Gangs

(U) The 14 Texas counties along the Mexico border represent approximately 9.7 percent of the Texas population, though since 2008 **these counties have accounted for 19.2 percent of juvenile felony drug referrals in Texas, 21.8 percent of juvenile felony gang referrals, and 14.3 percent of other juvenile gang referrals**, according to an analysis of information provided by the Texas Juvenile Probation Commission. The numbers listed below represent the number of referrals since 2008. **(Texas Juvenile Probation Commission)**

Juvenile Felony Drug Referrals	7,991
Juvenile Felony Drug Referrals (Border)	1,535
Juvenile Gang Referrals	25,421
Juvenile Gang Referrals (Border)	3,627
Juvenile Felony Gang Referrals	7,409
Juvenile Felony Gang Referrals (Border)	1,613

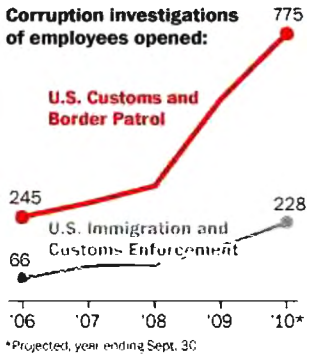
(U) One Laredo teenager, Rosalio Reta, claimed he participated in **at least 30 homicides in Mexico, while he was convicted of involvement in two murders in Texas,** according to open source reporting.

Public Corruption

(U) CBP Commissioner Alan Bersin testified to a June 9, 2011, hearing of the U.S. Senate Homeland Security and Governmental Affairs Committee, ad hoc Subcommittee on Disaster Recovery and Intergovernmental Affairs, that **since October 1, 2004, 127 CBP employees have been arrested or indicted for acts of corruption** including drug smuggling, alien smuggling, money laundering, and conspiracy; of those arrests, 95 percent are considered mission-compromising acts of corruption. **(CBP statement to U.S. Senate)**

(U) DHS Acting Inspector General Charles Edwards testified at the same hearing that "according to government reports, Los Zetas are becoming involved increasingly in systematic corruption to further alien and drug smuggling, including smuggling of aliens from designated special interest countries likely to export terrorism." **(DHS statement to U.S. Senate)**

(U) In FY2010, the DHS Office of Inspector General opened more than **770 corruption investigations of CBP employees and more than 220 investigations of ICE employees**, according to an article published September 12, 2010, by the Washington Post,[10] citing the DHS OIG. A graphic created by the Washington Post **projected that the number of investigations would be 775 for CBP and 228 for ICE** by the end of FY2010.



Graphic: The Washington Post

(U) **Less than 15 percent of CBP job applicants in 2009 were administered polygraph examinations, of which approximately 60 percent were found unsuitable for employment,** according to statements made March 11, 2010, by James Tomsheck, Assistant Commissioner of CBP's Office of Internal Affairs, in a hearing of the U.S. Senate Homeland Security and Governmental Affairs Committee, ad hoc Subcommittee on Disaster Recovery and Intergovernmental Affairs.

(U) The DHS Office of Inspector General opened **576 allegations involving CBP employees regarding corruption on the border in FY2009**, according to written testimony presented March 11, 2010, by Thomas Frost, Assistant Inspector General for Investigations in DHS's Office of Inspector General, to the U.S. Senate Homeland Security and Governmental Affairs Committee, ad hoc Subcommittee on Disaster Recovery and Intergovernmental Affairs.
(U) **More than 400 public corruption cases have originated from the U.S. Southwest Border region over an unspecified time period,** as well as more than **100 arrests and more than 130 state and federal cases prosecuted in FY2009**, according to written testimony presented March 11, 2010, by Kevin Perkins, Assistant Director of the FBI's Criminal Investigative Division, to the U.S. Senate Homeland Security and Governmental Affairs Committee, ad hoc Subcommittee on Disaster Recovery and Intergovernmental Affairs.

Illegal Alien Apprehensions

(U) From FY2006 to FY2010, the U.S. Border Patrol has reported **1,034,724 illegal alien apprehensions** in the sectors of RGV, Laredo, Del Rio, Marfa, and El Paso.

Total USBP Illegal Alien Apprehensions by Sector

	FY2006	FY2007	FY2008	FY2009	FY2010	Total
Del Rio	42,636	22,920	20,761	17,082	14,694	118,093
El Paso	122,256	75,464	30,312	14,999	12,251	255,282
Laredo	74,840	56,714	43,658	40,569	35,287	251,068
Marfa	7,520	5,536	5,391	6,360	5,288	30,095
RGV	110,528	73,430	75,473	60,989	59,766	380,186
Total	357,780	234,064	175,595	139,999	127,286	**1,034,724**

(U) Since 2006, the BSOC reports that **54,039 illegal alien referrals have occurred**.

IA Referrals	*Referrals*
Calendar Year	*Number (#)*
OBS Start (March 2006) - 2008	35,969
2009	6,557
2010	9,333
2011 (Jan 1-Jun 30)	2,708
Total	**54,567**

Medical Treatment in Texas of Victims of Cartel Violence in Mexico

(U) In a March 16, 2010, letter to President Barack Obama, the President & CEO of University Medical Center El Paso wrote that since January 23, 2008, **the hospital's Level 1 Trauma Center had treated nearly 150 survivors of violence in Mexico**. The cost of this treatment was nearly $3 million, $2,234,677 of which had not been repaid. **(University Medical Center El Paso)**

Seizure Information

BSOC Seizure Data (April, 2006 to June 30, 2011) (Meth seizure data represents January 2007 to June 30, 2011. Weapon seizure data represents January 2009 to June 30, 2011.)

Marijuana-	6,560,454.67 lbs
Estimated value-	$3,615,728,987.37
Cocaine-	70,858.25 lbs
Estimated value-	$2,086,497,815.94
Heroin-	1,641.38 lbs
Estimated value-	$67,006,621.72
Methamphetamine-	5,699.86 lbs
Estimated value-	$216,528,447.59
Currency-	$157,191,710.52
Weapons-	2,785

DPS Seizure Data (January 1, 2006 to June 30, 2011) (PSAT DIP Database did not capture all of CID's seizures until 2011.)

Marijuana-	1,058,694.33 lbs
Estimated value-	$583,488,793.04
Cocaine-	29,998.48 lbs
Estimated value-	$883,337,641.96
Heroin-	245.77 lbs
Estimated value-	$10,033,144.90
Methamphetamine-	2,387.42 lbs
Estimated value-	$90,694,170.43
Currency-	$116,177,713.53
Weapons-	919

DPS Seizure Data Excluding Border Star Counties (January 1, 2006 to June 30, 2011) (PSAT DIP Database did not capture all of CID's seizures until 2011.)

Marijuana- 320,350.88 lbs
Estimated value- $176,558,184.00

Cocaine- 11,495.16 lbs
Estimated value- $338,487,439.07

Heroin- 194.05 lbs
Estimated value-$7,921,859.99

Methamphetamine- 1,853.65 lbs
Estimated value- $70,416,970.01

Currency- $70,527,531.66

Weapons-720

Endnotes

[1] http://latimesblogs.latimes.com/laplaza/2011/06/mexico-war-dead-update-figures-40000.html
[2] https://sites.google.com/site/policereform/leap-mexico/narco-killings
[3] http://www.justice.gov/dea/pubs/states/newsrel/2010/elpaso031810.html
[4] http://travel.state.gov/travel/cis_pa_tw/tw/tw_4755.html
[5] http://travel.state.gov/travel/cis_pa_tw/tw/tw_5440.html
[6] http://www.supremecourt.gov/opinions/10pdf/09-11311.pdf
[7] http://www.cndh.org.mx/InfEspecialSecuestroMigrantes_8.pdf
[8] https://www.oag.state.tx.us/AG_Publications/pdfs/human_trafficking.pdf
[9] https://www.ncjrs.gov/pdffiles1/nij/grants/224393.pdf
[10] http://www.washingtonpost.com/wp-dyn/content/story/2010/09/12/ST2010091200425.html?sid=ST2010091200425%3Cbr%20/%3E

ATTACHMENT 11

Arrest Charges
Illegal Aliens Incarcerated in Texas Prisons, Texas
Department of Criminal Justice, Sept. 2011

ARREST CHARGES - ILLEGAL ALIENS INCARCERTATED IN TEXAS PRISONS

6,508 Illegal Aliens in Texas Prisons have accounted for 27,880 Texas arrest charges. The 27,880 offenses are enumerated below:

Offenses and Number of Occurrances

Traffic Offense / DWI..... 5,150
Dangerous Drugs..... 3,818
Assault..... 3,261
Obstruct Police..... 2,380
Burglary..... 2,250
Sex Assault..... l,866
Robbery..... 1,567
Larceny..... 1,441
Homicide..... 1,032
Weapon Offense.....951
Vehicle Theft..... 628
Sex Offense 588
Public Order Crimes..... 406
Invade Privacy 350
Damage Property..... 339
Arrest Data Not Clear..... 272
Kidnapping..... 227
Fraud..... 165
Public Peace..... 151
Family Offense 150
Forgery..... 140
Escape..... 115
Terroristic Threat..... 111
Obstruct / Contempt / Perjury..... 93
Crimes Against Person..... 68
Liquor.....67
Arson..... 59
Drunkenness 59
Illegal Entry..... 46
Commercial Sex..... 45
Class C Misdemeanor..... 23
Stolen Property..... 17
Morals / Decency Crime..... 17
Tax Revenue 7
Federal Offense..... 4
Smuggling..... 4
Property Crimes..... 3
Conservation..... 3
Obscene Material..... 3

Bribery..... 2

ATTACHMENT 12

U.S. State Department Travel Warning, April 22, 2011 &
DPS Travel Warning 2011

TRAVEL WARNINGS

Since March 2010 the Texas Department of Public Safety has issued a number of Mexico travel warnings to Texas citizens and visitors. DPS has taken this extraordinary action out of an abundance of caution and concern for the safety and welfare of our citizens and because it cannot guarantee the safety or security of its citizens if they travel to Mexico. In spite of much rhetoric relative to a "secure border," the facts reflect significantly to the contrary. Mexican cartels work closely with Texas-based and transnational gangs to support their criminal operations on both sides of the border. Since December 2006, reports indicate that between 38,000 – 40,000 people have lost their lives in Mexico as a result of the cartel wars between each other and the Government of Mexico (GOM).

As reported in the L.A. Times on May 7, 2011, Mexican President Felipe Calderon is touting 2011 as the year of tourism, and the Mexican Tourism Board is spending millions of dollars plastering billboards with images of the Great Pyramid of Cholula and underwater trees. At the same time the U. S. government has widened its travel warnings, which has thrown a wrench into Mexico's effort to attract foreign visitors. The State Department now urges U. S. travelers to steer clear of all or parts of 10 Mexican states, including most of the border region and popular vacation sites such as Acapulco and Monterrey.

The Department of Public Safety constantly monitors the travel warnings issued by the U. S. State Department and the activities of the cartels and the response by the GOM. The Department of Public Safety also considers a number of other important factors when issuing its travel warnings which are addressed in this document. The latest U. S. Department of State Travel Warning is as follows:

U.S. DEPARTMENT OF STATE
Bureau of Consular Affairs

Mexico

April 22, 2011

The Department of State has issued this Travel Warning to inform U.S. citizens traveling to and living in Mexico about the security situation in Mexico. This Travel Warning supersedes the Travel Warning for Mexico dated September 10, 2010 to consolidate and update information about the security situation and to advise the public of additional restrictions on the travel of U.S. government personnel.

Millions of U.S. citizens safely visit Mexico each year, including more than 150,000 who cross the border every day for study, tourism or business and at least one million U.S. citizens who live in Mexico. The Mexican government makes a considerable

effort to protect U.S. citizens and other visitors to major tourist destinations. Resort areas and tourist destinations in Mexico generally do not see the levels of drug-related violence and crime reported in the border region and in areas along major trafficking routes. Nevertheless, crime and violence are serious problems and can occur anywhere. While most victims of violence are Mexican citizens associated with criminal activity, the security situation poses serious risks for U.S. citizens as well.

It is imperative that you understand the risks involved in travel to Mexico and how best to avoid dangerous situations. Common-sense precautions such as visiting only legitimate business and tourist areas during daylight hours, and avoiding areas where criminal activity might occur, can help ensure that travel to Mexico is safe and enjoyable.

General Conditions

Since 2006, the Mexican government has engaged in an extensive effort to combat transnational criminal organizations (TCOs). The TCOs, meanwhile, have been engaged in a vicious struggle to control drug trafficking routes and other criminal activity. According to Government of Mexico figures, 34,612 people have been killed in narcotics-related violence in Mexico since December 2006. More than 15,000 narcotics-related homicides occurred in 2010, an increase of almost two-thirds compared to 2009. Most of those killed in narcotics-related violence since 2006 have been members of TCOs. However, innocent persons have also been killed as have Mexican law enforcement and military personnel.

There is no evidence that U.S. tourists have been targeted by criminal elements due to their citizenship. Nonetheless, while in Mexico you should be aware of your surroundings at all times and exercise particular caution in unfamiliar areas. Bystanders, including U.S. citizens, have been injured or killed in violent incidents in various parts of the country, especially, but not exclusively in the northern border region, demonstrating the heightened risk of violence throughout Mexico. TCOs, meanwhile, engage in a wide-range of criminal activities that can directly impact U.S. citizens, including kidnapping, armed car-jacking, and extortion that can directly impact U.S. citizens. The number of U.S. citizens reported to the Department of State as murdered in Mexico increased from 35 in 2007 to 111 in 2010.

The Mexican government has deployed federal police and military personnel throughout the country as part of its efforts to combat the TCOs. U.S. citizens traveling on Mexican roads and highways may encounter government checkpoints, which are often staffed by military personnel. You are advised to cooperate with personnel at government checkpoints and mobile military patrols. TCOs have erected their own unauthorized checkpoints, and killed or abducted motorists who have failed to stop at them

Violence along Mexican roads and highways is a particular concern in the northern border region. As a result, effective July 15, 2010, the U.S. Mission in Mexico imposed restrictions on U.S. government employees' travel. U.S. government employees and their families are not permitted to drive from the U.S.-Mexico border to or from the interior of Mexico or Central America. Travel by vehicle is permitted between Hermosillo and Nogales.

While violent incidents have occurred at all hours of the day and night on both modern toll ("cuotas") highways and on secondary roads, they have occurred most frequently at night and on isolated roads. To reduce risk, you are strongly urged to

travel only during daylight hours throughout Mexico, to avoid isolated roads, and to use toll roads whenever possible. For more information on road safety and crime along Mexico's roadways, see the Department of State's Country Specific Information.

Due to ongoing violence and persistent security concerns, you are urged to defer non-essential travel to the states of Tamaulipas and Michoacán, and to parts of the states of Sonora, Chihuahua, Coahuila, Sinaloa, Durango, Zacatecas, San Luis Potosi and Jalisco. Details on these locations, and other areas in which travelers should exercise caution, are below.

Violence along the U.S. - Mexico Border

You should be especially aware of safety and security concerns when visiting the northern border states of Northern Baja California, Sonora, Chihuahua, Nuevo Leon, and Tamaulipas. Much of the country's narcotics-related violence has occurred in the border region. More than a third of all U.S. citizens killed in Mexico in 2010 whose deaths were reported to the U.S. government were killed in the border cities of Ciudad Juarez and Tijuana. Narcotics-related homicide rates in the border states of Nuevo Leon and Tamaulipas have increased dramatically in the past two years.

Carjacking and highway robbery are serious problems in many parts of the border region and U.S. citizens have been murdered in such incidents. Most victims who complied with carjackers at these checkpoints have reported that they were not physically harmed. Incidents have occurred during the day and at night, and carjackers have used a variety of techniques, including bumping moving vehicles to force them to stop and running vehicles off the road at high speed. There are some indications that criminals have particularly targeted newer and larger vehicles with U.S. license plates, especially dark-colored SUVs. However, victims' vehicles have included those with both Mexican and American registration and vary in type from late model SUVs and pick-up trucks to old sedans.

If you make frequent visits to border cities, you should vary your route and park in well-lighted, guarded and paid parking lots. Exercise caution when entering or exiting vehicles.

Large firefights between rival TCOs or TCOs and Mexican authorities have taken place in towns and cities in many parts of Mexico, especially in the border region. Firefights have occurred in broad daylight on streets and in other public venues, such as restaurants and clubs. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area. The location and timing of future armed engagements cannot be predicted. You are urged to defer travel to those areas mentioned in this Travel Warning and to exercise extreme caution when traveling throughout the northern border region.

Northern Baja California: Targeted TCO assassinations continue to take place in Northern Baja California, including the city of Tijuana. You should exercise caution in this area, particularly at night. In late 2010, turf battles between criminal groups proliferated and resulted in numerous assassinations in areas of Tijuana frequented by U.S. citizens. Shooting incidents, in which innocent bystanders have been injured, have occurred during daylight hours throughout the city. In one such incident, an American citizen was shot and seriously wounded.

Nogales and Northern Sonora: You are advised to exercise caution in the city of Nogales. Northern Sonora is a key region in the international drug and human trafficking trades, and can be extremely dangerous for travelers. The U.S. Consulate requires that armored vehicles are used for official travel in the consular district of Nogales, including certain areas within the city of Nogales. The region west of Nogales, east of Sonoyta, and from Caborca north, including the towns of Saric, Tubutama and Altar, and the

eastern edge of Sonora bordering Chihuahua, are known centers of illegal activity. You should defer non-essential travel to these areas.

You are advised to exercise caution when visiting the coastal town of Puerto Peñasco. In the past year there have been multiple incidents of TCO-related violence, including the shooting of the city's police chief. U.S. citizens visiting Puerto Peñasco are urged to cross the border at Lukeville, AZ, to limit driving through Mexico and to limit travel to main roads during daylight hours.

Ciudad Juarez and Chihuahua: The situation in the state of Chihuahua, specifically Ciudad Juarez, is of special concern. Ciudad Juarez has the highest murder rate in Mexico. Mexican authorities report that more than 3,100 people were killed in Ciudad Juarez in 2010. Three persons associated with the Consulate General were murdered in March, 2010. You should defer non-essential travel to Ciudad Juarez and to the Guadalupe Bravo area southeast of Ciudad Juarez. U.S. citizens should also defer non-essential travel to the northwest quarter of the state of Chihuahua. From the United States, these areas are often reached through the Columbus, NM and Fabens and Fort Hancock, TX, ports-of-entry. In both areas, U.S. citizens have been victims of narcotics-related violence. There have been incidents of narcotics-related violence in the vicinity of the Copper Canyon in Chihuahua.

Durango, Coahuila and Zacatecas: Between 2006 and 2010, the number of narcotics-related murders in the State of Durango increased dramatically. Several areas in the state have seen sharp increases in violence and remain volatile and unpredictable. U.S. Government employees are restricted from traveling to the cities of Durango and Gomez Palacio. You should defer non-essential travel to these cities.

The State of Coahuila has also experienced an increase in violent crimes and narcotics-related murders. U.S. government employees are restricted from traveling to the area known as "La Laguna," including the city of Torreon, and the city of Saltillo within the state. You should defer non-essential travel to this area, as well as to the cities of Piedras Negras and Ciudad Acuña due to frequent incidents of TCO-related violence.

The northwestern portion of the state of Zacatecas has become notably dangerous and insecure. Robberies and carjackings are occurring with increased frequency and both local authorities and residents have reported a surge in observed TCO activity. The area is remote, and local authorities are unable to regularly patrol it or quickly respond to incidents that occur there. The Consulate General in Monterrey restricts travel for U.S. government employees to the city of Fresnillo and the area extending northwest from Fresnillo along Highway 45 (Fresnillo-Sombrerete) between Highway 44 and 49. In addition, Highway 49 northbound from Fresnillo through Durango and into Chihuahua is declared and should be considered a dangerous area. You should defer non-essential travel to these areas.

Monterrey and Nuevo Leon: The level of violence and insecurity in Monterrey remains elevated. Local police and private citizens do not have the capacity to deter criminal elements or respond effectively to security incidents. As a result of a Department of State assessment of the overall security situation, on September 10, 2010, the Consulate General in Monterrey became a partially unaccompanied post with no minor dependents of U.S. government employees permitted.

TCOs continue to use stolen cars and trucks to create roadblocks or "blockades" on major thoroughfares, preventing the military or police from responding to criminal activity in Monterrey and the surrounding areas. Travelers on the highways between Monterrey and the United States (notably through Nuevo Laredo and Matamoros/Reynosa) have been targeted for robbery that has resulted in violence. They have also been caught in incidents of gunfire between criminals and Mexican law

enforcement. In 2010, TCOs kidnapped guests out of reputable hotels in the downtown Monterrey area, blocking off adjoining streets to prevent law enforcement response. TCOs have also regularly attacked local government facilities, prisons and police stations, and engaged in public shootouts with the military and between themselves. Pedestrians and innocent bystanders have been killed in these incidents.

The number of kidnappings and disappearances in Monterrey, and increasingly throughout Monterrey's consular district, is of particular concern. Both the local and expatriate communities have been victimized and local law enforcement has provided little to no response. In addition, police have been implicated in some of these incidents. Travelers and residents are strongly advised to lower their profile and avoid displaying any evidence of wealth that might draw attention.

Tamaulipas: You should defer non-essential travel to the state of Tamaulipas. In an effort to prevent the military or police from responding to criminal activity, TCOs have set up roadblocks or "blockades" in various parts of Nuevo Laredo in which armed gunmen carjack and rob unsuspecting drivers. These blockades occur without warning and at all times, day and night. The Consulate General prohibits employees from entering the entertainment zone in Nuevo Laredo known as "Boys Town" because of concerns about violent crime in that area. U.S. government employees are currently restricted from travelling on the highway between Nuevo Laredo and Monterrey, as well as on Mexican Highway 2 towards Reynosa or Ciudad Acuña due to security concerns.

Be aware of the risks posed by armed robbery and carjacking on state highways throughout Tamaulipas. In January 2011, a U.S. citizen was murdered in what appears to have been a failed carjacking attempt. While no highway routes through Tamaulipas are considered safe, many of the crimes reported to the U.S. Consulate General in Matamoros took place along the Matamoros-Tampico highway, particularly around San Fernando and the area north of Tampico.

Crime and Violence in Other Parts of Mexico

While security concerns are particularly acute in the northern border region, you should be aware of situations that could affect your safety in other parts of Mexico.

Sinaloa and Southern Sonora: One of Mexico's most powerful TCOs is based in the state of Sinaloa. Since 2006, more homicides have occurred in the state's capital city of Culiacan than in any other city in Mexico, with the exception of Ciudad Juarez. You should defer non-essential travel to Culiacan and exercise extreme caution when visiting the rest of the state. Travel off the toll roads in remote areas of Sinaloa is especially dangerous and should be avoided.

In the last year, the city of Mazatlan has experienced a level of violence, primarily confrontations between TCOs, not seen before. In 2010 there were over 300 narcotics-related murders within the city, compared to fewer than 100 in 2009. You are encouraged to visit Mazatlan during daylight hours and limit the time you spend outside tourist centers. Exercise caution during late night and early morning hours when most violent crimes occur.

Highway robbery and carjacking are ongoing security concerns for travelers on the Mexican toll road Highway 15 in Sonora and on Maxipista Benito Juarez in Sinaloa. These highways are known to be particularly dangerous at night when roadside robberies occur. When traveling in Sinaloa, U.S. government employees are required to use armored vehicles and may only travel in daylight hours.

San Luis Potosi: In February 2011, one U.S. government employee was killed and another wounded when they were attacked in their U.S. government vehicle on Highway 57 near Santa Maria del Rio. The incident remains under investigation. Cartel violence and highway lawlessness have increased throughout the state and are a continuing security concern. All official U.S. government employees and their families have been advised to defer travel on the entire stretch of highway 57D in San Luis Potosi as well as travel in the state east of highway 57D towards Tamaulipas. You should defer non-essential travel in these areas.

Nayarit and Jalisco: Official U.S. government employees are prohibited from traveling to Colotlan, Jalisco, and Yahualica, Jalisco, both near the Zacatecas border, because of an increasingly volatile security situation. Concerns include roadblocks placed by individuals posing as police or military personnel and recent gun battles between rival TCOs involving automatic weapons. You should defer non-essential travel to these cities. In addition, the border areas between Jalisco state and the states of Zacatecas and Michoacán, as well as southern Nayarit state including the city of Tepic, have been sites of violence and crime involving TCOs. You should exercise extreme caution when traveling in these areas. Due to recent TCO-mounted road blockades between the Guadalajara airport and the Guadalajara metropolitan areas, U.S. government employees are only authorized to travel between Guadalajara and the Guadalajara Airport during daylight hours.

Michoacán: You should defer non-essential travel to the State of Michoacán, which is home to another of Mexico's most dangerous TCOs, "La Familia" Attacks on government officials and law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout Michoacan, including in and around the capital of Morelia and in the vicinity of the world famous butterfly sanctuaries in the eastern part of the State.

Guerrero and Morelos: You should exercise extreme caution when traveling in the northwestern part of the state of Guerrero, which has a strong TCO presence. Do not take the dangerous, isolated road through Ciudad Altamirano to the beach resorts of Ixtapa and Zihuatanejo and exercise caution traveling on the coastal road between Acapulco and Ixtapa due to the risk of roadblocks and carjackings. Numerous incidents of narcotics-related violence have occurred in the city of Cuernavaca, in the State of Morelos, a popular destination for American language students.

Downtown **Acapulco** and surrounding areas have seen a significant increase in narcotics-related violence in the last year. Incidents have included daylight gunfights and murders of law enforcement personnel and some have resulted in the deaths of innocent bystanders. Due to the unpredictable nature of this violence, you should exercise extreme caution when visiting downtown Acapulco. To reduce risks, tourists should not visit the downtown area at night and should remain in clearly identifiable tourist areas. In general, the popular tourist area of Diamante just south of the city has not been affected by the increasing violence.

In addition to the above latest State Department travel warning the United States Consulates General in a number of the northern Mexican states has issued warnings to American citizens and U. S. law enforcement against travel of any type in Mexico following the discovery of several mass graves in and around the Nuevo Laredo area and other parts of Mexico.

In February 2011, suspected members of Los Zetas operating an illegal highway checkpoint in San Luis Potosi opened fire on two ICE Special Agents travelling in a vehicle with diplomatic license plates, killing one and wounding the other.

In April 2010, an explosive device detonated inside the U. S. Consulate compound in Nuevo Laredo, MX after the device was thrown over the wall of the compound.

In September 2010, the U.S. Consulate in Monterrey became a partially unaccompanied post where no minor dependents of U.S. government employees are permitted to remain in the city. The decision was based on the August 2010 shooting near the American Embassy Foundation School and the high kidnapping rate in the area.

The Mexican Attorney General's Office (PGR) reported in January 2011 that 166 innocent bystanders died from drug related violence in 2010, compared to only 62 in 2009.

Other Security Factors Considered by DPS

- **Extreme Violence (photos available upon request)**
  - **Murders**
  - **Assassinations**
  - **Beheadings**
  - **Dismemberments**
  - **Skinning Alive**
  - **Acid Baths**
  - **Torture**
  - **Kidnappings**
    - **2010 saw a significant increase in kidnappings and extortions, particularly in northern states. Kidnappings reported for the January – July 2010 period were up 14.7% from the same period last year, and 78.8% from that same period in 2008. (Drug Violence in Mexico, Trans-Border Institute, February 2011)**
    - **Study: 2010 Record Year for Kidnappings in Mexico. Kidnappings in Mexico are at a record high and are more than twice as likely to end with the death of a hostage, according to the Citizen's Council for Public Security and Penal Justice. CCSP-JP Director Jose Ortega Sanchez said the Mexico's kidnapping rate now stands at 195 cases for every million inhabitants, the second highest in the hemisphere after Venezuela. Ortega added that kidnapping data from municipal governments is often "falsified" or underreported, for example, in Tamaulipas, the municipal government only reported 25 kidnap cases, when the military reported rescuing 173 people.**

- Rapes
  - In April 2010, Amnesty International reported that as many as six out of every 10 Central American women and girls are raped as they pass through Mexico hoping to cross illegally into the United States.
- Human Trafficking
  - "Mexico has long been a trampoline for migrants from around the world trying to bounce over the Rio Grande into the United States. Now Mexico's drug gangs have become increasingly involved in the human trafficking business while the nation's prisons and police are under increased pressure from the crime wave." "Everyone round the world knows that Mexico is the back door into the United States. That causes a lot of problems here and now we are seeing those problems come to a head," said a high ranking official at Mexico's National Immigration Institute, who asked his name not be used in case of repercussion from superiors. Immigration officials estimate that more than 300,000 undocumented foreigners pour through Mexico each year to try to sneak over the southern U. S. border. This generates an enormous human trafficking business, estimated to be worth more than $2 billion each year to Mexican gangs. In April 2010, police arrested dozens of officials from the National Immigration Institute for working with human traffickers. "The immigration institute is so corrupt it is like a rotting corpse," said migrant activist and Roman Catholic priest Alejandro Solalinde. Mexican President Felipe Calderon said he was taking bold action to punish corrupt officials and protect migrants by signing a new immigration bill into law last week. "We know of hundreds of hundreds of heartbreaking stories of migrants who have been victims of corrupt (Mexican) authorities," Calderon said as he signed the bill.
- Extortions
  - Phone Extortion in Mexico Rising: According to the Citizen's Council for Public Safety (Consejo Ciudadano de Seguridad Publica-CCSP), a government body that monitors crime rates, in 2010 a total of 119,007 threatening calls were reported
- Carjackings

- **High Profile Murders/Intimidation**
  - **Mayors (2004-2010, 27 Mayors killed)**
  - **Executive Law Enforcement Officials**
    - **Cancun, in February 2009, retired Brigadier General Mauro Tello Quinones arrived in Cancun to weed out corruption in the city's police force and to take the streets back from the criminal gangs. He lasted three days. On 3 February, together with his bodyguard and driver, he was abducted. The three men were tortured and then driven to a remote jungle location where they were killed with a bullet to the head.**
    - **Praxedis G. Guerrero, in October 2011, 20-year-old female criminology student accepted the job of police chief in Praxedis G. Guerrero. In March she fled with her family to El Paso seeking asylum after numerous death threats against her and her family.**
  - **Police Officers**
    - **Thousands have been kidnapped, assassinated, murdered, beheaded, dismembered and tortured since 2006.**
  - **Military**
    - **Mexico City, in May 2011, just recently retired senior Army General Jorge Juarez Loera, who was the number three in the Mexican Army, was shot dead. General Loera had previously headed the Joint Operation Chihuahua which targeted drug trafficking in the northern states of Chihuahua, Coahuila and Durango.**
  - **Prosecutors**
    - **In April 2011, the body of federal prosecutor, Claudia Avila Yanez, was discovered in Villa Juarez, a community near the City of Lerdo. The prosecutor was shot several times in the abdomen and extremities. Earlier, the head of the Attorney General's Durango Bureau, Gustavo Armando Garcia Silve, was also murdered.**
  - **Government Candidates**
    - **13 candidates killed during the 2010 elections including the PRI-Candidate for Governor of Tamaulipas, Rodolfo Torre Cantu.**
  - **Journalists**
    - **At least 38 journalists have been killed between 2006 – 2010 and many more threatened into silence.**
  - **Medical Doctors**
    - **In December 2010, Dr. Jose Alberto Betancourt Rosales was kidnapped from the parking garage at Centro Medico in Juarez. His kidnappers**

asked for $1 million in ransom money. His body was found a few days later.

- According to the Citizen's Medical Committee of Cuidad Juarez, at least 9 doctors have been killed and 21 others kidnapped in the past two years and almost 70% of private practices in the city have closed down since 2008.

- United States Citizens Killed in Mexico
  - The U. S. State Department reports that 341 American citizen deaths in Mexico were classified as homicides, drug-related, or executions between January 1, 2006 and December 31, 2010. Of these, 47 deaths occurred in 2006, 38 in 2007, 62 in 2008, 81 in 2009, and 113 in 2010.
  - Much of the violence affecting American citizens in Mexico is increasingly concentrated in the four Mexican states adjacent to Texas.
  - In March 2010, an employee of the U. S. Consulate in Cuidad Juarez and her husband (El Paso County Deputy Sheriff) were murdered while leaving a birthday party. The spouse of another Consulate employee died in a separate attack.
  - In September 2010, a U. S. citizen was murdered on Falcon Lake Reservoir on the Tamaulipas-Texas border. The Mexican investigator looking into the murder was later found murdered.
  - In October 2010, a 19-year-old U. S. student at the Brownsville campus of the University of Texas was murdered when suspected drug traffickers hijacked a bus in southern Tamaulipas in which he was a passenger.
  - In November 2010, two U. S. citizens from the University of Texas at El Paso were murdered in Cuidad Jaurez. Both were students at the University's College of Business Administration.
  - In January 2011, a U. S. Citizen and female missionary was shot in the head by suspected traffickers on a Mexican highway as they were returning to Texas. The missionary was pronounced dead at a Texas hospital.
  - In January 2011, a Canadian traveler was shot and wounded during a firefight between rival drug traffickers in Mazatlan.
  - In February 2011, two U. S. teen students from Cathedral High School and Radford School in El Paso and a Mexican national were murdered at a used car dealership in Juarez.
  - In April 2011, two U. S. citizens were killed by gunmen who opened fire while they waited in line to reach a Tijuana border crossing.

- Mass Graves/Massacres
  - In August 2010, 72 migrants from Central and South America were kidnapped and murdered in San Fernando.
  - In April 2011, Mexican security forces searching for abducted bus passengers in a violent northern state bordering Texas stumbled on a collection of pits holding a total of 59 bodies.
  - In April 2011, another site was discovered in San Fernando where at least 219 bodies have been recovered.
  - Officials in Tamaulipas say they have found 34 grave sites scattered in a wide arc around San Fernando.

- Orphans & Child Victims
  - Mexico's Human Rights Commission reports that at least 12,000 children have lost one or both of their parents as a result of the cartel wars.
  - In March 2011, a Chihuahua state police commander was attacked as she carried her 5-year-old daughter to school. Both died of multiple gunshot wounds.
  - In February 2011, assassins went hunting for a Ciudad Juarez man, but the intended target wasn't home, so they killed his three daughters instead, ages 12, 14, and 15.
  - In March 2011, a young woman was bound and gagged, shot and left in a car in Acapulco. Her 4-year-old daughter lay slumped beside her with a single bullet to the chest.
  - Media reports reflect that children as young as 10 have been employed by crime gangs to watch over street corners or sell drugs, and in some cases kill.
  - In December 2010, Mexican authorities arrested a 14-year-old who allegedly confessed that he worked as an assassin for $250 a week.

- Internally/Externally Displaced Persons
  - The Internal Displacement Monitoring Centre reports that about 230,000 people have been displaced in Mexico because of drug violence.
  - Mexican government census figures released in March 2011 support the idea of an exodus, at least in some areas. The census, carried out in mid-2010, listed as uninhabited 61% of the 3,616 homes in Praxedis G. Guerrero, a

striking 111,103 of the 448,785 homes in violence-wracked Ciudad Juarez were abandoned, or about 23%, and almost 33% of the 160,171 houses in Reynosa were unoccupied.

- Press Censorship
  - Spanish journalist Judith Torrea harshly criticized a recent pact on news coverage of the drug-related mayhem signed by 50 Mexican media groups, saying it was an agreement to "not report" on drug trafficking and violence "because they say organized crime should not get any publicity."

- Government Corruption (Trans-Border Institute Report, February 2011)
  - Government corruption remains a pervasive problem in 2010.
  - In May 2010, Quintant Roo's gubernatorial candidate and the former mayor of Cancun, Gregorio Sanchez, was detained on drug charges and accused of having ties to the Beltran Leyva and Zeta drug trafficking organizations.
  - Former governor, Mario Villanueva of Quintana Roo (Cancun) was extradited to the U. S. on drug charges.
  - In October 2010, the Chihuahua state Attorney General, Patricia Gonzalez Rodriguez, was accused by her own brother of having ties to the Juarez cartel.
  - Former congressmen, Julio Cesar Godoy, was formally impeached and is now under investigation for allegedly accepting $2 million in bribes based on his recorded telephone conversations with drug traffickers.
  - In July 2010, prison officials granted inmates an unofficial furlough in order to murder a group of 17 people.
  - Corruption is pervasive at all levels and is not limited to any particular political party.
  - Competition has emboldened cartels to expose the corruption networks of their rivals, either through public accusations or as informants for the government upon arrest.
  - AP (Mark Stevenson) 10 May 2010, The reported discovery in cartel hands of a sheaf of police documents containing agents' names and contact numbers, along with apparent references to shared U. S. intelligence data, has renewed fears of high-level corruption in Mexico's war on drugs. Coming less than two years after a widespread corruption probe known as "Operation Clean House," toppled Mexico's former anti-drug czar, Noe Ramirez, and other top officials for allegedly collaborating with a drug cartel. "Operation Clean House was a

warning that something wasn't working, and this confirms that it still isn't working," said Jore Chabat, a Mexican expert on drug cartels. "What I see clearly here...is that the process of infiltration continues" among Mexican police, said Samuel Gonzalez, the country's former top anti-drug prosecutor. "When you're dealing with systemic corruption, you sort of have to presume innocence with caution. You know there are people out there who are not innocent, but you have to work with somebody, as best you can. You take whatever countermeasures you can," said David Shirk, director of the University of San Diego's Trans-border Institute.

- Criminal Conviction Rate
  - Only 15% of drug suspects detained between December 2006 – September 2009 have been convicted or acquitted.
  - A Monterrey Institute of Technology study reported that 98.5% of the crimes committed in Mexico go unpunished.
  - Of the 7.48 million crimes – both federal and common – committed in Mexico this year (2010), the conviction rate has only been about 1%.
  - The study also cited that about 15% of reported crimes are investigated, but only about 4% of the cases are completed due to the "slowness in the majority of the proceedings and failure to comply with the law."
  - The study also cited that only about 1.75% of suspects ever get convicted.
  - The Mexican Attorney General's Office (PGR) released a report in April saying that authorities were able to bring to trial only 28% of federal arrests in 2010. The rest of the more than 160,000 people detained went free.

- Youth Criminals
  - An increasing disturbing factor in the vicious violence plaguing Mexico is the youthfulness of the individuals involved, whether as assassins or victims.
  - According to Luis Astorga, an expert on drug trafficking in Mexico, "The labor force willing to enter into the criminal world is more than enough, and there is a "reserve army" of young people without options, from both rural and urban areas.
  - Astorga also stated that there are large numbers of young people in rural areas who are involved in growing marijuana and opium poppies, in packaging drugs, and they are also the hired assassins in those parts of the country.
  - Organized crime analyst, Jose Juis Pineyro, who teaches at Mexico City's Metropolitan Autonomous University, stated that, "The most obvious change I

see is that those being recruited as hit men or hired assassins are young people – very young people- who are unemployed and poor or drug addicts. They're not professional assassins, and they don't have particular knowledge of how to use weapons. They're disposable, they're recyclable. They're hired for an average of US $500 to $650 a month to kill an unlimited number of people or to carry out other acts of violence. Ten years ago, a hired assassin charged US $12,000 to $13,000 to kill just one person. So you could say that hiring assassins has become cheaper for drug traffickers."

- In December 2010, Mexico was shocked when a 14-year-old nicknamed "El Ponchis" was arrested in Cuernavaca, Morelos, trying to take a flight to San Diego after appearing in a gruesome video on YouTube. He is believed to have been recruited by the Beltran Leyva Cartel and told reporters he had participated in four beheadings. When asked how and why he could do such a thing, he said he was drugged and threatened with death if he did not participate.

- Increased Drug Addiction Among Mexican Population
  - According to Lesly Narvaez Castanon of the Ixtapa-Zihuatanejo Youth Integration Center (CIJ), on average, local youth begin using marijuana at ten years of age and then quickly transition to other drugs. "We give them an average of four to six months before they move on to other substances."
  - Recent CIJ studies reveal that while marijuana was Zihuatanejo's drug of choice in 2009, cocaine was the favorite in 2010.
  - Narvaez warns that the local drug abuse problem is moving from the orange zone to the red zone, but is quick to add that Zihuatanejo and Guerrero still lag behind the level of illegal drug consumption in places like Mexico's northern border states.

- Availability of Heavy Weapons/Explosives/Improvised Explosive Devices
  - Machine Guns
  - .50 cal sniper rifles
  - Fragmentation grenades
  - 40mm grenades
  - Rocket Propelled grenades (RPGs)
  - Improvised Explosive Devices (IEDs)
  - Vehicle Borne IEDs

- Cartel Expansion
  - Mexican drug cartels are not confined to Mexico. They have established an effective presence north of the border, and have even expanded to Europe and Africa. Expanding their operations into Central America gives them more opportunity to hide out from Mexican authorities and expand their range of operations. The bottom line is the Mexican cartels are wreaking havoc in these societies. In Guatemala, drug money has permeated the country as cartels build airstrips in the jungle. Guatemalan President Alvaro Colom calls the cartel invasion the biggest threat to his country and the region. Guatemala has also proven to be a fertile recruiting ground for the Zetas, who have been able to enlist former members of the feared Guatemalan army unit called the Kaibiles.
  - El Salvador has become a center for money laundering for the cartels because in 2001, El Salvador adopted the U. S. dollar as its currency which makes money laundering quite easy.
  - Honduras is convenient for unloading boatloads of cocaine.
  - Hezbollah is using the same southern narcotics routes that Mexican drug kingpins do to smuggle drugs and people into the United States, reaping money to finance its operations and threatening U. S. national security. According to Michael Braun, who recently retired as assistant administrator and chief of operations for the U. S. Drug Enforcement Administration, "Hezbollah relies on the same criminal weapons smugglers, document traffickers and transportation experts as the drug cartels." Hezbollah shifted its trade routes along with the drug cartels, using Lebanese Shi'ite expatriates to negotiate contracts with Mexican crime bosses, Mr. Braun said.
  - Hezbollah. Admiral James G. Stavridis, Supreme Allied Commander-Europe, testified that the nexus between illicit drug trafficking – including routed, profits, and corruptive influence and Islamic radical terrorism is a growing threat to the U. S.
  - State Department Country Reports – 2008. "Over the past five years, smuggling rings have been detected moving people from East Africa, the Middle East, and Southwest Asia to Honduras or through its territory. In 2008, there was an increase in the number of boats arriving on the North coast, ferrying people from all over the world seeking to enter the United States illegally via Guatemala and Mexico.
    - Farida Goolam Ahmed was captured at the McAllen airport in 2004. Ahmed was on the terrorist watch list and was part of a team planning attacks in New York city.

- Ahmed Muhammad Dhakane asked for asylum at one of the international bridges in Brownsville. Dhakane admitted to FBI agents that he smuggled at least seven Al Qaeda terrorists into the country.
- Mahmoud Khalil and Ziad Saleh, two Hama operatives were arrested in January 2005.
- Mahmoud Kourani was put under surveillance after the owner of Cafe La Libanesa in Tijuana, Mexico, Salim Boughader Mucharrafille, was arrested in 2002 by US agents on charges of smuggling people. Mahmoud Youssef Kourani, a former Hizbullah fighter, was born in 1971 in Lebanon. He entered USA in 2001, after he bribed the Mexican consul in Lebanon, through the Mexican border and settled in Detroit. As he came to USA Mahmoud Kourani shaved his beard, avoided local mosques and blended in. His brother, Haydar Kourani, was Hizbullah's chief of military security for South Lebanon and his operator in the US.
- Salim Boughader was arrested in 2002 and used to work for Hezbollah TV.

- Tourist Resort Areas – Recent Open Source Headlines
  - Acapulco is listed in the top five most violent cities in Mexico in 2010 (Trans-Border Institute, February 2011)
  - 5/30/11 Shootout in Acapulco: Five killed, including two policemen. "Violence in the famous port continues to increase, there were a total of 16 executions on Sunday alone in separate incidents."
  - 5/28/11 Armed Group conducts attack on dance hall in Acapulco injuring four
  - 5/23/11 Decapitation in Acapulco (Narco-message left on body, "Mr. Governor, you are responsible for these deaths because you support your cousin, Victor Aguirre.") {NOTE: Victor Aguirre is reportedly identified as a leader within the Independent Cartel of Acapulco}
  - 5/3/11 Teen of 14 and another man gunned down in Acapulco
  - 5/3/11 Person executed, two vehicles burned, corpse found in trunk in Acapulco
  - 5/1/11 Three men and a woman found tortured and executed in Acapulco
  - 4/29/11 Three male murder victims with slit throats in Acapulco
  - 4/27/11 Acapulco-Zihuatanejo Hwy Decapitations, the bodies of four decapitation victims were left at a bus stop along the A-Z Hwy, seven narco-messages left
  - 4/25/11 Acapulco Hwy kidnapping, businessman Javier Dimas Moharro, 43, was kidnapped by a group of gunmen near the 20 de Noviembre neighborhood

- **4/24/11 Five women beheaded in Acapulco, including 14 year old**
- **4/18/11 Dismembered male body found with message recovered in Acapulco**
- **4/6/11 EFE - Acapulco dealing with worst image crisis ever, "Crime is the main reason that tourists are staying away from Acapulco, but "worn out" infrastructure and a bad public transit system are also problems, the tourism development secretary said. Acapulco has been the scene of several drug-related killings in the past few days linked to a broader war for control of the area being waged by several drug cartels. The Cartel Independiente de Acapulco, the Pacifico Sur cartel and the Gulf cartel have been fighting for control of the resort city. In January (2011), 22 people were massacred in Acapulco by suspected members of the Cartel Independiente de Acapulco. Of the 22 victims, 15 were beheaded. The war between the rival cartels left 370 people dead last year in Acapulco alone.**
- **4/5/11 Acapulco Cartel sets fire to Market, engages military**
- **3/31/11 Area man executed in Acapulco, the man showed signs of torture**
- **3/27/11 Deputy police commander kidnapped, tortured, executed in Acapulco**
- **3/27/11 Shootout near Acapulco beach, yacht club and tourist restaurant filled with tourist, 3 federal police, 2 civilians wounded**
- **3/27/11 Three Acapulco highway patrol officers kidnapped, 1 other officer, civilian wounded**
- **3/25/11 Five are butchered in Acapulco with narco messages signed by El Chapo Guzman**
- **3/23/11 Soldiers arrest three alleged kidnappers and rescue a kidnapping victim in Puerto Vallarta**
- **3/19/11 Ten people killed as masked men open fire in bar in Mexican resort city of Acapulco**
- **3/18/11 Three decapitation victims recovered in [redacted]ala ir[redacted]alisc[redacted]**
- **3/17/11 4 year old girl shot in Acapulco, 5th child victim this week. At least five young people have died in drug violence in Acapulco since Sunday, including a 2-year-old boy and a 6-year-old boy killed with an elderly woman who tried to shield them when gunmen opened fire at their home.**
- **3/17/11 Violence continues in Acapulco.** Violence Continues in Acapulco, Guerrero – On 17 March 2011, multiple murders were reported in Acapulco [16.8500 -99.9167], Guerrero. Some of these incidents were reported as follows:
  - **Incident one**: multiple murder victims were recovered during the early hours of the day. No additional details regarding these incidents were provided.

- **Incident two**: the body of a male murder victim was recovered from the trunk of a vehicle that was abandoned in an area known as La Cima along the Mexico-Acapulco federal highway. The victim in question had been visibly tortured before being shot multiple times.
- **Incident three**: the body of taxi driver Epifanio Rodriguez Salazar, 41, was recovered from the interior of a Tsuru vehicle that was left parked in front of a car shop.
- **Incident four**: the body of Gonzalo Rojas Fernandez, 31, was recovered from the back seat of a blue Sentra. This vehicle was abandoned near Las Cruces intersection, and reportedly had at least 20 bullet holes on its exterior.
- **Incident five**: at approximately 1600 hours, police officer Jose Raul Mendoza Marquez, 42, was attacked by a group of hitmen along the Escenica Highway. After the attack, he was taken to the hospital where he died later as a result of the gunshot wounds he sustained.

- **3/16/11 Mexico Gunmen kill six, including two children in Acapulco**
- **3/16/11 One suspected cartel gunman killed and one police officer injured in firefight in [redacted]un**
- **3/15/11 [redacted] murders, police discovered four burned bodies in Cancun. The victims were blindfolded with their hands bound and had wounds to their necks**
- **3/15/11 [redacted]: Six people found without heart. All the bodies had an incision on the left side through which criminals removed the heart.**
- **3/15/11 In the Pacific coast city of Acapulco, a teenager was killed outside the junior high school he attended**
- **3/15/11 Eight more killed in Acapulco. Eight people in 3 different areas of the city have been killed by cartel gunmen. These included a 70 year old grandmother protecting her grandchildren, 6 and 2 years old, that were killed anyway. Two other children were wounded, including a 20 day old infant.**
- **3/15/11 Police in the resort city of Can[redacted] found four bodies that had been set on fire**
- **3/13/11 Authorities reported that nine people were shot dead Sunday in the resort city of Acapulco. The victims included a woman and her two children and a retired Navy Captain.**
- **3/9/11 Nine bodies found near Acapulco Mexico resort. Mexican authorities said they unearthed nine bodies near the beach resort of Acapulco.**

- 2/9/11 [redacted] cancellations follow violence. First Mazatlan, then Acapulco, and now Cancun is paying the tourist price for increasing gang violence sweeping many parts of Mexico.
- 1/11/11 Man beheaded, another shot in [redacted]
- Jan 2011 Acapulco - Police found 15 decapitated bodies, believed to have been victims of the fighting waged by the La Familia, Los Zetas and Beltran Leyva gangs over control of the key point of entry for drugs heading north to the United States.
- 8/31/10 Deadly [redacted] Bombing: Will Drug Cartel Squeeze Life Out of Tourist Destination? The deadly bombing of the Castillo del Mar bar in Cancun left 8 people dead.
- 6/19/10 Mexican police say they have found 12 mutilated corpses in hidden graves on the outskirts of [redacted], the latest sign drug-related violence is spreading to the popular tourist destination. In May, Mexican police arrested Cancun's mayor Gregorio Sanchez on suspicion of offering information and protection to the Zetas as well as the Beltran Leyva catels.

- 2/1/09 On 1 February, retired Brigadier General Mauro Tello Quinones arrived in [redacted] Gen. Tello's task was to weed out corruption in the city's police force; to take the streets back from the criminals. He lasted less than three days at work. On 3 February, together with his bodyguard and driver, he was abducted. The three men were tortured and then driven to a remote jungle location where they were killed with a bullet to the head.

Border Impact to Tarrant County Texas;

Thank you for the invitation and opportunity to testify

Tarrant County Texas is the 3rd largest county in Texas and 14th in the Nation with a population of 2.2 million and growing.

The impact of the open border since 2021 has had numerous effects on our county. We have seen health issues, including mental health, increase rapidly due to 1000% plus increase of available drugs entering across the border. In Fort Worth Texas in 2020, you could buy a gram of methamphetamines for $80. Today, you can get pure meth for $15 a gram. A fentanyl pill in 2020 costs between $30-35 a pill, today it is $8. Our county jail has a daily average of 4,300 inmates. We have seen mental health issues rise from 25% of the population in 2017 to 66% in 2024 with 42% being chronic illnesses. Suspected issues are illegal narcotics abuse with methamphetamine leading the way. There are several surface economic factors, including the cost of housing Illegal aliens in our jail alone. The daily cost is over $24,000 a day to county residents with the average inmates stay being 145 days. These inmates have committed crimes against our residents (list of offenses attached). The attached snap shot of 264 illegal aliens is costing $3.5 million. The information on the attached heat map of opioid overdoses came from ambulance transportations with the cost of an overdose Emergency in an ambulance alone being well over $5 million dollars, not including the ER and hospital stay. With the cost of education rising, we are unsure of the impact on the border. According to HHS, since 2021 over 2,500 unescorted minors now live in Tarrant County with unknown sponsors; 350 this year alone so far. While the economic impact is one thing, the toll on human lives is another, one of which cannot be calculated. In the attachment we see 264 people with detainers, with over 170 violent crime. These crimes include Murder, Sex Assault of Children, Victimization of the Elderly, and the list goes on. These offenders, which many are gang members and outlaws, have left nothing untouched. While I do not necessarily think these aliens have a higher crime rate, just the fact these people are illegal in our country and committed crimes is the impact.


8 KILOGRAMS OF FENTANYL PILLS


18 POUNDS OF METH FALSE COMPARTMENT IN THE DASHBOARD


23 KILOGRAMS OF METHAMPHETAMINE


$81,090 FOUND IN A FALSE COMPARTMENT


273 KILOGRAMS OF METHAMPHETAMINE

TARRANT COUNTY

OFFICE OF THE SHERIFF
BILL E. WAYBOURN

Bill Waybourn
Sheriff
O| 817.884.3098
F| 817.212.6987

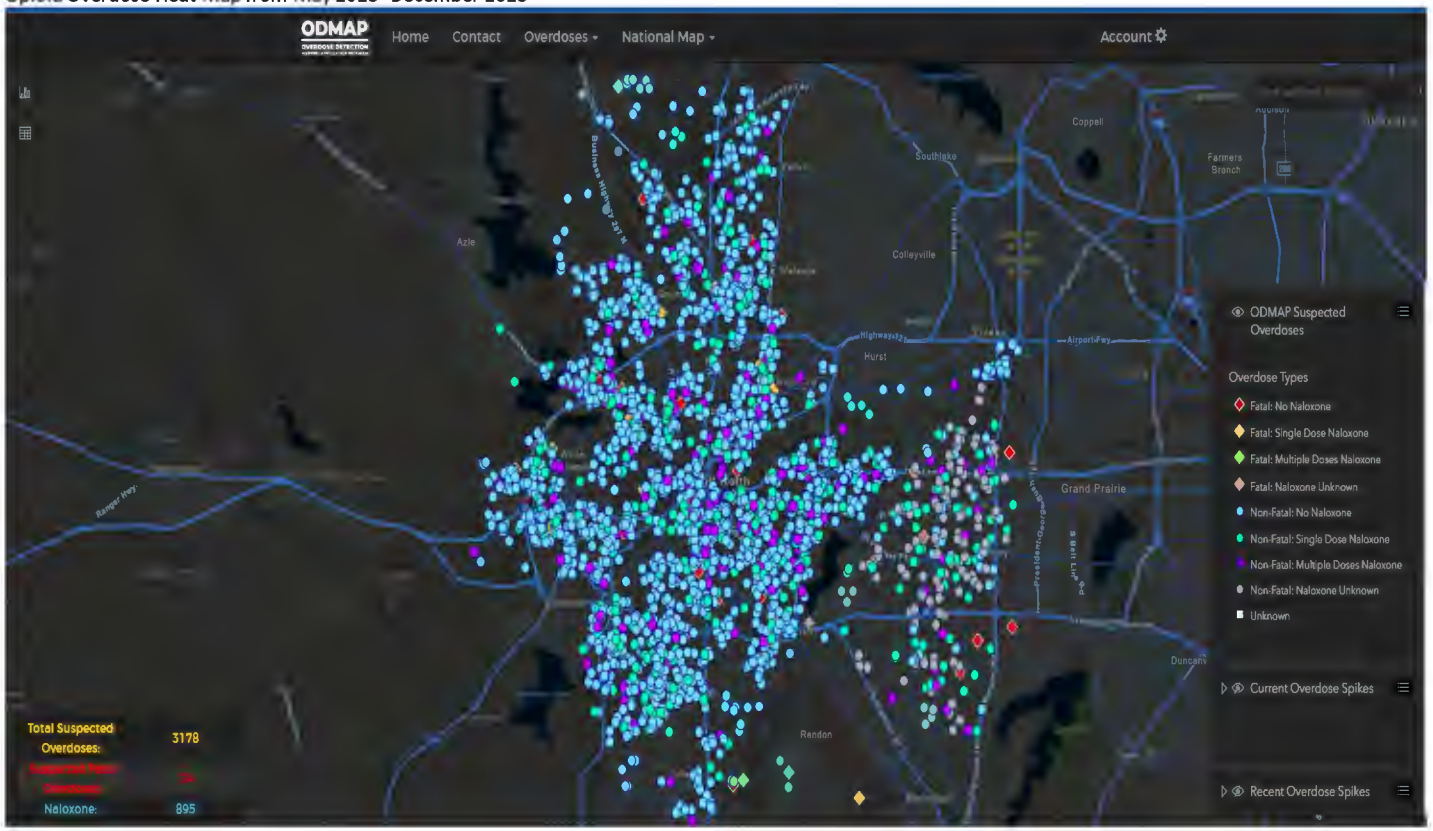
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200 Taylor Street
Seventh Floor
Fort Worth, Texas 76196

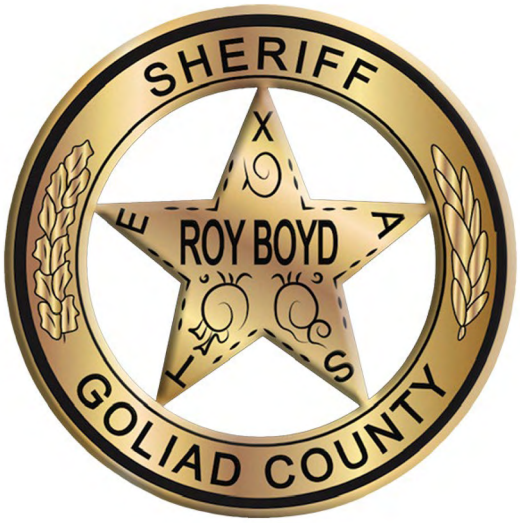
One Day Snapshot of Inmates in the Tarrant County Jail.

264 Inmates are held on State charges and Federal detainers for illegally entry into this county. 264 inmates with 311 State charges.

178	Violent Crimes
8	Murder
44	Aggravated Sexual Assault, Indecency, Continuous Sexual Assault of Child
6	Aggravated Robbery
3	Aggravated Kidnapping w/Deadly Weapon
47	Assault
38	Aggravated Assault w/Deadly Weapon
5	Sexual Assault / Aggravated Sexual Assault
4	Injury to Elderly
3	Burglary of Habitation
3	Engaging in Organized Crime
3	Unlawful Carry of a Weapon
2	Intoxicated Assault w/Vehicle
2	Possession of Child Pornography
2	Unlawful Possession of Firearm by Felon
1	Felony Escape
1	Intoxicated Homicide
1	Manslaughter
2	Resisting Arrest
2	Terroristic Threat on Family Member
1	Discharge of Firearm Illegally
133	Non-Violent/Property Crime

Opioid Overdose Heat Map from May 2023- December 2023





BORDER CRISIS IMPACTS ON LOCAL LAW ENFORCEMENT AND RECOMMENDATIONS FOR MITIGATION

EXECUTIVE SUMMARY

Goliad County is located in the Gulf Coast region of South Texas, and is 160 miles from Laredo and 190 miles from McAllen. We are situated at the crossroads of US Hwy 59 and Hwy 183, with US 59 being an ingress/egress route leading from the U.S./Mexico border and into the interior of the United States.

Goliad is located between the border region and Houston, which is the main distribution hub for cartel slave trade and narcotics trafficking activities in Texas. This places us in a strategic staging and trafficking route utilized by transnational criminal organizations.

I. SITUATION

A. General Situation:

The Rio Grande Valley (RGV) continues to be at the forefront of border security. Transnational Criminal Organizations have established smuggling networks and travel routes along the border leading into the interior of the United States. As illicit activity increases in the RGV area, it has caused a spike in illegal activity and cartel presence in communities such as Goliad. We have established partnerships with federal, state and local law enforcement agencies to disrupt the illicit flow of humans and narcotics into the United States. However, the volume of criminal activity in our region has over ran our capabilities at the local level.

B. Terrain/Transportation Routes:

Goliad and the surrounding counties are flat to rolling terrain with a mix of open fields, tree covered land, and thick brush predominately covered with huisache and mesquite. While 59 and 183 are the main thoroughfares through Goliad County, we are connected to our surrounding counties by a winding system of farm to market and county roads that provide twenty-six entry and exit points into the county. Many of these back roads have become the predominate smuggling routes due to the lack of manpower to patrol them in an adequate manner.

C. Criminal Element:

Transnational Criminal Organizations, to include domestic gangs, operate in illicit activities that include the smuggling of humans and narcotics into the interior of the United States, as well as the smuggling of weapons and bulk cash into Mexico.

D. Collateral Damage:

Goliad County Sheriff's Office is currently monitoring thirteen stash sites that are utilized intermittently by cartel members and operatives in Goliad County. Similar sites exist throughout our region. The sites in Goliad County are all on private property and are being used without the permission of the landowners. Sites are used for storing illegal aliens while fueling up at nearby stations, exchanging illegal aliens between traffickers, stripping stolen vehicles, and hiding traffickers, aliens, and stolen trucks during enhanced enforcement efforts.

As a result of this activity, landowners in Goliad County are unable to exercise their right to the pursuit of happiness by enjoying the use of their property. Property owners have expressed their fear of going onto their own ranches and staying in their own homes alone.

The following pictures are from stash sites used by the cartel and their operatives:





The above location was utilized to strip stolen trucks from the Houston area and to store illegal aliens being transported north. The property owner was unaware of the cartel presence and called law enforcement upon discovery.





The site shown above has been used exclusively for the purpose of hiding illegal aliens in thick brush near a county road. This location has been used intermittently for years without the permission of the landowner.

We are aware of thirteen such sites in Goliad County at this time.

II. ENFORCEMENT ISSUES:

While the Goliad County Sheriff's Office works in partnership with the state, federal, and other local law enforcement agencies, the resources available to combat the overwhelming influx of criminal activity resulting from the open border has become untenable.

The Goliad County Sheriff's Office has two deputies on duty at any given time. They patrol 859 square miles. With an average call load of just under 12,000 calls per year, day to day demands prevent the adequate patrolling of known trafficking routes on the rural roads near the edges of the county.

During pursuits and bailouts, the Goliad County Sheriff's Office is required to dedicate 100% of its resources to the resolution of the matter for time periods ranging from two hours to twelve hours. This includes investigators, the Chief Deputy, and the Sheriff. These events absorb all of the available EMS personnel and equipment.

During bailouts, we typically will have twelve or more illegal aliens flee into thick brush. In years past, TDCJ would send tracking dogs to assist in the apprehension of those who fled. Several years ago, TDCJ reduced their dog program and would not respond as readily as in the past. Private tracking dog groups took on this task, however, in recent months they too have stopped responding with any certainty. This creates a problem in the fact that on most scenes we lack inadequate manpower to set up the proper perimeter. If we do not have enough manpower to set up a perimeter, we do not possess enough manpower to conduct a ground search through thick brush. Even if we abandon the perimeter in order to conduct a ground search, most small agencies do not possess the proper equipment to safely conduct such searches without unnecessarily endangering their personnel.



This picture is of a group of illegal aliens that fled on foot in Goliad County and attempted to bribe a private citizen at his house into giving them a ride north. At the point in which this picture was taken, the illegal aliens had traveled several miles through thick brush in a matter of about two hours.

This is the truck the above illegal aliens were being transported in at the time of the pursuit and crash.



III. Encounters:

The first encounter of this year with smuggling of illegal aliens in Goliad County occurred on January 21, 2021. While conducting traffic enforcement one block from the Goliad Sheriff's Office, the Sheriff attempted to stop a Camaro for running a stop sign. The attempted stop turned into a pursuit, then a wreck in a back yard of a residence, where four illegal aliens from Honduras and Guatemala were detained. Between eight and ten illegal aliens fled into a brushy area near the river and were not apprehended.



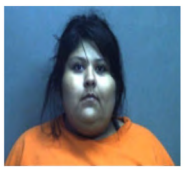


The above Camaro was reported stolen within minutes of being crashed. Due to the newly stolen status, the owner of the truck was left with the burden of paying for the damage to his vehicle.

On March 12, 2021, the Goliad Sheriff's Office responded to a call of a deceased female in the brush along Highway 183. Investigation revealed that Dina Gonzalez, who was an illegal alien from Honduras had been dumped along the roadside after dying while being transported to Houston from Mission, TX.

Working with Homeland Security, it was discovered that the victim had been kept at this stash house in Mission, TX during her journey to Houston in hopes of being reunited with her brother who was already living in the United States. The Sheriff visited this house as part of the investigation and was sent a letter by an attorney within hours stating that he represented the people who reside at the house.





In April of this year, the Goliad County Sheriff's Office stopped and arrested the woman in the mugshot seen here. She was transporting four young women classified by the cartels as "especials". The young women thought that they were being taken to Houston to be reunited with family members who are also in the United States illegally. Our investigation revealed that the girls were really being taken to Chinatown in Houston where they were to be placed into forced prostitution.

The woman in the mugshot above is an American Citizen who was hiding fake social security cards for each of the girls in her panties.



This investigation revealed details about the travel patterns of persons being smuggled and trafficked out of Mexico and into Texas. Our victims in this case had travelled across Mexico over a period of about a month. They had to pay as they moved from one stage of the journey to the next, making their way north. One of these victims had been delivered to the cartel by the Mexican authorities in Monterrey after a failed previous attempt to enter the US. From Monterrey, the victim had to pay to get moved to the Reynosa area into a warehouse where about 300 other soon to be illegal aliens were being held.



From the warehouse, people were taken into groups of seven to nine to a staging point along the south banks of the Rio Grande to wait for nightfall and the vacating of the river by Border Patrol boats. The image to the left was captured from the video of people in Mexico waiting in the underbrush along the river.

After crossing the river in the night, the cartel moved the illegal aliens to a factory/warehouse near the Rio Grande, on the Texas side of the border. Just like the warehouse in Mexico, the location was a working site with employees in the same building as the people being housed by the cartel operatives. According to the account of one victim, there were hundreds of illegal aliens being kept at the location at a time with one single toilet for their use. Upon arrival at this location, more money was paid by those being smuggled.

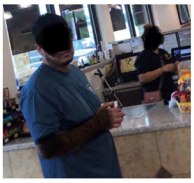
From the warehouse along the border, the illegal aliens were taken to a hotel that was rented out to the cartel for staging of illegal aliens prior to being taken north to Houston. The Sheriff and County Judge of Goliad travelled to the Valley and staked out the hotel just prior to a raid by the Border Patrol that resulted from the investigation in Goliad.





These are a few of the illegal aliens that Border Patrol apprehended in the hotel during the raid.

The "especials" in this case were young, attractive females. Prior to leaving the hotel to travel to Houston, they were cleaned up, given "American" clothes and makeup, and posed for a series of pictures to match the cover story they were to use if stopped and questioned along the way. When they arrived at the Border Patrol checkpoint at Sarita, three of the girls pretended to be asleep in the back seat of the car. By design, the most attractive of the illegal aliens was placed in the front passenger seat. When the Border Patrol Agent began asking the driver too many questions, another cartel operative in a car following them began honking his horn as if he had grown impatient. This caused the agent to stop his questioning and waive all of the waiting cars through without stopping any of them.



This gentleman caught the eye of the Sheriff at a convenience store in Goliad. His reaction to seeing law enforcement was telling. The Sheriff took a picture of him and sent it to Homeland Security. He was identified as a cartel operative and was likely in Goliad due to the fact that they had stolen a truck in a neighboring county the night before and stored it on private land in Goliad County before taking it south. His fingerprints were found on a stolen truck that was involved in a pursuit and bailout in Lavaca County a few weeks prior. His face is blacked out, because he has not been apprehended as of this time.

The following pictures are of incidents from our area:

















Signs like this one have been placed along roadways entering Goliad County as a warning to traffickers of humans and drugs to keep out of the County.



III. RECOMMENDED SOLUTIONS:

The overall solution to the problem as it exists in our state must be one that is multi-jurisdictional, contains the partnership of local, state, and federal agencies, possesses advanced communications and technological capabilities, provides for enhanced personnel allocations for smaller agencies, and operates under a unified plan that guarantees all parties involved are working in coordination and are reporting progress to a central location for tracking of results.

Recommendations for the functionality of each portion of the overall suggested solution are broken down below. They are the recommendations as seen by the Sheriff of Goliad County as a result of the oversight of multiple border security operations and a long-standing participation in Border Star and pre-Border Star efforts.

A. Multi-Jurisdictional Cooperation:

The blueprint for this portion exists through the Border Star program and the weekly teleconference meetings. However, because of limitations on the use of Border Star funding and the proliferation of Operation Stonegarden funding, local participation in the DPS coordinated Border Star program has been reduced greatly.

Governor Abbott stated in our recent meeting that he intends to create a new funding source at the state level that would be similar to Stonegarden. If this funding stream is more flexible in nature and allows for the use of funds for overtime, additional personnel within the grant cycle, vehicles, equipment, the purchase of technology, and the cost of administrating the grant, we could see a drastic increase in participation.

It is my recommendation that any participation in a grant as mentioned by the Governor should come with the requirement of participation in asset laydown reports, joint operation plan participation, intelligence sharing, and open participation in JOIC teleconferences.

The Goliad County Sheriff's Office is working on a cooperative with other local law enforcement at this time in an effort to share personnel and resources as the need arises. We also work in close cooperation with the Department of Homeland Security and Border Patrol out of Corpus Christi.

B. Enhanced Communications and Technology:

To this day, some agencies cannot utilize radios to communicate with their neighboring agencies. Small groups of interdictors have taken to using either text groups or various apps on their phones to communicate information for real time information sharing. Some apps are not secure, causing potential problems with information leaks. I recommend that the State of Texas coordinate the use of a singular app that can be verified as secure for law enforcement use for voice or text communications across groups or for person to person. Some of the Sheriffs are utilizing Secured Communications, however I cannot guarantee that it will provide for all of the needs of field personnel. This decision is best left to the Texas DPS or a committee of state and local personnel.

Knowing to some extent the operational habits of the cartel and their operatives is only of limited use due to the unpredictable nature of their organization. Their constant changes in travel patterns and counter intelligence measures make it hard to keep up with and catch them due to our limited manpower at the local level. We have been looking to technology to counter the unpredictable nature of the cartel and their operatives.

At the recent National Sheriffs Association Conference in Phoenix, AZ, Sheriff Pinky Gonzales (Refugio), Sheriff Benny Martinez (Brooks), Sheriff Louderback (Jackson), and Sheriff Roy Boyd of Goliad County met with the representatives from a technology firm that will provide us with the actionable intelligence we need to take precise action, as well the information needed to assist the various agencies who aid in the follow up investigations.

C. Personnel:

Like many small agencies, the Goliad Sheriff's Office field response consists of a total of eight patrol deputies. This is split into four shifts of two deputies on duty at any given time. As stated above, this lack of manpower does not provide for adequate coverage to handle daily call volume and conduct consistent pro-active enforcement against the ongoing problems resulting from the border crisis.

The recommendation on this portion is three parts as follows:

Overtime – The Goliad County Sheriff's Office currently has limited funds from Border Star and Stonegarden grants. These grants afford us the opportunity to conduct limited enhanced enforcement actions and are often saved for regional operations in conjunction with other law enforcement partners. Overtime allocations under the annual county budget do not adequately cover the needs of normal annual overtime expenses and does not provide for enhanced activities needed during a crisis like we are currently experiencing.

If a supplemental grant could be provided from the State of Texas for local law enforcement for the purposes of enhanced enforcement efforts and multi-jurisdictional operational cooperatives, we could place deputies on the road in an overtime capacity. This would increase our capacity to fight the surge of cartel activities in our county and in our region, thereby creating a lasting deterrent to conducting illicit business in Texas.

Part of this funding should also cover dispatch, investigative requirements directly tied to the issue, EMS needs that arise, and administrative costs. Enhanced enforcement will create additional work throughout these areas, and additional work hours that are needed and can be directly tied to these efforts should be covered as well.

Personnel – As has been stated, the Goliad County Sheriff's Office is only staffed to place two deputies on the streets at a time. I am recommending that the Goliad SO be provided with funding (for a limited time to be specified by the State) for the hiring and outfitting of two additional deputies to be tasked with enforcing laws related to transnational criminal activities negatively impacting our county and region. They can be placed on a floating schedule that would allow for the flexibility needed to combat the ever-changing tactics of the cartels and their operatives. These deputies would also be utilized for multi-agency operations directed at intercepting illegal activities.

Field work conducted by deputies necessitates the need for investigative follow up work in order to gather, categorize, and disseminate intelligence, prepare cases for prosecution, and conduct forensic analysis of cell phone and social media information. The Goliad County Sheriff's Office currently has two investigators. One is assigned to normal case assignment work, while the other is tasked to the Crossroads Area Taskforce with an emphasis on narcotics and trafficking cases. While we work close with Homeland Security in an effort to move cases to the federal side, our current case load is already at the level of requiring triage in order to successfully work more important cases to completion. For these reasons, I am requesting that for the duration of the program or grant, we be funded an additional FTE in investigations for the purpose of focusing on cases related to transnational criminal activity.

Equipment - Work directed at apprehending, deterring, and investigating criminal offenses related to transnational criminal activity will require support equipment in order to outfit deputies, provide transportation, ensure communications capabilities, and complete tasks in the field that are specialized to this type of event.

IV. Summary

During most days there are multiple police pursuits and bailouts in our region of the state. Cartels and their operatives are taking over land of private citizens who are too fearful to exercise their right to use property they lawfully own and should be able to enjoy.

Thousands of stolen trucks are being used to transport illegal aliens into indentured servitude across the United States. These people are predominately distributed to markets across the country from the main distribution center of Houston.

The illegal aliens are being taken advantage of by cartels who see people as a valuable commodity instead of a fellow human being. Many of them enter the United States believing that their debt to the traffickers has been paid in full, only to find that they now owe more money that must be paid off through labor, participation in criminal acts, or forced prostitution.

Until someone steps up and enacts a comprehensive plan that causes Mexico cease their partnership with the cartels in this mass transfer of slaves into the United States, the only thing we can do is enforce the laws that fall under each of our jurisdictions. This effort must be a cooperative that combines local, state, and the few willing federal agencies that exist. However, local law enforcement is not funded to combat this unprecedented wave of criminal activity invading our state and our counties. If we are to be considered effective, funding must be part of this solution. This funding must be robust enough to enhance the manpower and capabilities of local law enforcement, but it must be done so in a manner that is temporary so as not to be seen as a means by which commissioners courts can use the State to supplant budgets and abdicate their responsibility to fund county operations.

V. PROPOSED BUDGET

The following budget spreadsheet is based upon a two-year cycle of funding for personnel and overtime allocations. It is the Sheriff's recommendation to Governor Abbott and was submitted for consideration on July 15, 2021.

Goliad County Sheriff's Office		
Law Enforcement Personnel		
Category	Narrative/Justification	Amount
Personnel, Overtime, & Fringe	Fiscal Breakdown	
Law Enforcement Operational Personnel Needs & Overtime	GCSO- Two additional Deputies assigned as FTE to Patrol for targeted operational period @ $19.00 Rate/hour (2 years of pay)	$173,888
	GCSO- One additional Investigator FTE assigned to related operation @ $20.56 Rate/hour (2 years of pay)	$94,082.56
	GCSO- Law Enforcement Operational Overtime 2,400hours @ $28.50 OT Rate/hour	$68,400.00
	GCSO- Telecommunications Overtime 2000 hours @ $21.11 OT Rate/hour	$42,220.00
	GCSO - Administrative/Grant Management Overtime 416 hours @ $24 OT Rate/hour	$9,984.00
Personnel Fringe Benefits	GCSO – Fringe Benefits for additional FTE Deputies & Investigator	$96,370.56
	GCSO – Fringe Benefits for Overtime	$42,952.00
	GCSO - Fringe Benefits for Administrative OT	$3,016.00
Total Personnel and Overtime Request Amount For a 2 Year Period		**$530,913.12**
Prosecutor Expenses		
Category	Narrative/Justification	Amount
Compensation	Criminal DA Prosecutor at $45 Rate/hour for an estimated 4 hours per week working on related cases (416 hours over a 2-year period)	$18,720.00
Fringe Benefits	Criminal Prosecutor - Fringe Benefits	$6,364.48
Mileage	Travel for Prosecutor from his office and back in Refugio (54.4 miles round trip estimated at once per week for two years)	$3,055.01
Total for Expense for Prosecutor		**$28,139.49**
CONTINUED		

EMS Personnel and Ambulance Utilization		
Category	Narrative/Justification	Amount
Personnel, Overtime, & Fringe	Fiscal Breakdown	
	Goliad EMS Medics Response to Associated Scenes @ $15.07 Rate/hour (40 deployments at estimated 2 hours per deployment, 2 medics per deployment)	$2,411.20
	Goliad Medics Fringe Benefits Based Upon Above Calculations	$1,020.80
Ambulance & Equipment	Goliad EMS Ambulance & Equipment Rate of $100 per Hour based off 40 2-hour deployments	$8,000.00
Total Cost for EMS		**$11,432.00**

Equipment		
Category	Description	Amount
Uniforms	Uniforms for 2 additional Patrol Deputies to include 3 short sleeve shirts, 3 long sleeve, and three pairs of uniform pants	$4,797.64
Hand Held Radios	3 Motorola APX 4000 VHF MHZ Model 2 Portable Radios for 2 Patrol Deputies and 1 Investigator	$8,418.33
Vehicles	3 Ford F150 4x4 Crew Cab Trucks	$113,919
Fuel for Vehicles	15,000 miles per Vehicle per year at @$0.54 per mile for 2-year period x 3 Vehicles	$48,600
Prisoner Partitions	2 Prisoner Partitions Installed for Trucks Assigned to Patrol	$1,345.00
Mobile Radios	3 Motorola APX 4500 VHF Radios Installed in Ford 150 Police Trucks	$6,817.47
Emergency Equipment for Vehicles	Emergency Lights, Consoles, Grill Guards, Siren, etc. for 3 Ford F150 Patrol Trucks	$23,880
Vehicle Graphics	Material and Installation for graphics on 2 Ford F150 Patrol Trucks assigned to Patrol Division	$900.00
Night Vision	10 Sets of ATN NVG7-2WPTI Night Vision Goggles for night time recovery operations and safety of Deputies in the field	$16,499.99
4 Wheelers	2 Honda Foreman 520CC 4x4 4 wheelers for apprehension, search and rescue, tracking dog recovery, etc.	$18,362.86
Trailers for 4 wheelers	2 Texas Bragg 12' single axle trailers with rear loading ramp for deployment of ATV's @$2875.00 each	$5,750.00
Total Cost of Equipment		**$249,290.29**

CONTINUED

Software for Regional Investigative Cooperative	
Description	Amount
This information was removed due to the sensitive nature of the software requested.	**$126,000**
TOTAL REQUESTED AMOUNT	**$945,774.90**

Operation Lone Star Taskforce Update
&
Recommendations For A New State Initiative

2023

EXECUTIVE SUMMARY

As a result of the wave of transnational criminal activity invading Texas in 2021, Governor Abbott provided relief to local jurisdictions through the Operation Lone Star grant. In order to maximize the effectiveness of the funds provided, the Goliad County Sheriff's Office set out to ensure coordinated enforcement efforts at the local level. Section one of this document is a brief overview of what participating agencies have done as a result of the OLS funding provided by the Texas Legislature and Governor Abbott.

I. OPERATION LONE STAR TASKFORCE UPDATE

A. Formation

Shortly after receiving funding from the Governor's Office, Sheriff Boyd hired John Davis of Jackson County to act as Commander of Taskforce efforts under OLS. Additionally, three interdictors and an intel/investigator were hired for the sole purpose of enforcing laws pertaining to transnational criminal activity.

In order to maximize the use of funds provided, the Goliad County Sheriff's Office initiated the formation of a taskforce to work in a cooperative effort. Knowing that we lacked the ability to solve the illegal entry problem at the border as local entities, we set out to create an environment through intelligence and enforcement efforts that would deny cartels and their operatives the ability to freely operate within our region of the state.

The Operation Lone Star Taskforce has now grown to include the following agencies:

Goliad Co. SO	Bee Co. SO	Live Oak Co. SO
McMullen Co. SO	Wilson Co. SO	Wharton Co. SO
Jackson Co. SO	Edna PD	Refugio Co. SO
San Patricio Co. SO	Kleberg Co. SO	Kleberg Co. Attorney Taskforce
Kingsville PD	Brooks Co. SO	Falfurrias PD
Cuero PD	Yoakum PD	Gonzales Co. SO
Gonzales PD	Nixon PD	Zapata County SO
US Border Patrol	Dept. of Homeland Security	US Coast Guard

B. Methodology of the Operation Lone Star Taskforce

After beginning our combined efforts in March of 2022, we quickly began to understand that Mexican cartels were utilizing other organizations (contractors) within Texas to oversee and coordinate their smuggling efforts. These contractors then employed lesser organizations, or subcontractors to insulate their operations from detection and prosecution.

Thanks to our relationship with the Department of Homeland Security (HSI) office in Victoria, the OLS Taskforce was soon receiving and disseminating real-time intelligence obtained by HSI by informants within the contractor and subcontractor groups. This information was combined with investigative material from debriefs of smugglers and illegal aliens arrested by OLS Taskforce member agencies, data revealed from search warrants on phones recovered from bailouts and arrested individuals, and license plate reader data. As a result of this intelligence gathering, the OLS Taskforce began to form a greater understanding of the

operational habits of cartel operatives at different levels and went as far as placing trackers on vehicles used by smuggling operations.

Interdiction deputies and officers shared the actionable intelligence throughout the Taskforce via an app. This real-time intelligence sharing was used to intercept scouts, intercept load vehicles, and disrupt pickup areas used to load illegal aliens into vehicles.

Abandoning the traditional method of law enforcement agencies, which usually involved arresting a smuggler caught in the act while releasing the illegal aliens to Border Patrol, the Goliad County Sheriff's Office OLS unit began conducting long-term investigations into the organizations. This usually involved bringing in HSI to initiate a federal case while GCSO assisted and ran a parallel state case for prosecution. As is shown in the following section, this led to a more effective way of handling smuggling cases.

Specific cases have been highlighted in previous documents submitted.

C. Result of the Effort

The result of the obtaining and sharing of real-time intelligence provided several benefits. First, we were able to identify numerous members of the criminal organizations, what they drove, where they conducted business, the routes they utilized, and when they were on the road conducting smuggling operations. In some cases, we learned where they lived and where the businesses were that they utilized to provide false legitimacy to their finances. With this intelligence in hand, we began coordinated multi-jurisdictional enforcement actions that apprehended and disrupted criminal activity.

Eventually the efforts resulted in the identifying of the primary smuggling organization operating out of the RGV sector (Name withheld due to an ongoing investigation). This organization was responsible for overseeing all major smuggling efforts in the area from Roma, east to the Gulf of Mexico, from Roma north to Falfurrias, and back across from Falfurrias to the Gulf of Mexico. This organization was also responsible for the taxation in this region for multiple cartels.

The disruption of this organization began with the OLS Taskforce enforcement efforts and led to them altering their path from the RGV sector of the border to Houston. The Taskforce denied direct passage from the border to Houston via main roadways such as Hwy 77, Hwy 281, and Hwy 59. Within months of our collective efforts, the organization began travelling to San Antonio and taking I-10 to Houston. This was a more costly and time-consuming means of smuggling, which impacted the profit margin for this organization and their subcontractors.

With the intelligence about the new smuggling routes in hand, the OLS Taskforce refocused on the routes from pickup locations which lead to San Antonio. In a short period of time, member agencies intercepted and arrested smugglers taking the new routes. We also intercepted and arrested smugglers from subcontractor organizations working under the primary organization.

During late 2022, the Goliad County Sheriff's Office, HSI, and other agencies from the Houston area executed search and arrest warrants on upper and mid management members of the primary organization in Houston. This action, in combination with the arrest of many lesser smugglers, led to the immediate reduction in smuggling activity in the jurisdictions participating in the OLS Taskforce. Goliad County Sheriff's Office then began a clean-up operation on other smaller smuggling organizations and executed arrest and search warrants in the Houston area

with the help of the US Marshal's Office. More search and arrest warrants in the Houston area are to come.

D. Effects of the Effort

After the long efforts of the OLS Taskforce agencies, we noticed a drastic reduction in smuggling apprehensions in our areas of responsibility. Upon meeting with Border Patrol, we were advised that illegal alien apprehensions in the RGV for January 2023 were at the lowest level since President Trump was in office. They advised that there were three primary reasons for this:

- The formation of and enforcement activities of the OLS Taskforce disrupted smuggling operations in the area and caused the smugglers to select new routes on their way to Houston.
- Once the smugglers began altering their routes, the OLS Taskforce identified the new routes and adapted enforcement actions. This denied smuggling organizations access to their secondary travel patterns.
- Federal prosecutors in Corpus began accepting smuggling cases, creating an additional punitive deterrent for smugglers.

Additionally, HSI agents explained that the arrest of so many management level primary organization members caused a void in the organizational structure. As a result, the newly promoted members decided that in order to continue their operation, it was in their best interest to move west. This organization is now operating along the border, west of Eagle Pass, as far out as Terrel County.

The reality of this effort is that Operation Lone Star funding has made the citizens in our region of Texas safer from cartel criminal activity.

E. Future Enforcement Actions

Recently, Sheriff Coe of Kinney County sent out a written request for assistance due to the overwhelming smuggling activity in his county. This was followed by a similar request from Sheriff Cleveland in Terrel County.

Beginning this week, the OLS Taskforce is conducting a planned enforcement operation in Kinney County. This initial operation will have 35 deputies, dispatchers, and jailers from the OLS Taskforce and will be a test run to work out the logistics for more lengthy operation to come. If manpower and funding allow, it is our plan to provide assistance to Terrel County in the near future as well.

While we will be assisting Kinney County in months to come, we are already aware of an up-and-coming organization with the potential to fill the vacuum left by the primary organization. Working with Border Patrol intelligence personnel, we are developing a plan to place trackers on their vehicles and take the group down before they can become more difficult to dismantle.

II. RECOMMENDATIONS FOR A NEW APPROACH

In this section, I will address what I have witnessed as a law enforcement officer with twenty-nine years of experience. Stating this, I understand that the Governor and Texas Legislature have to give consideration to things that I do not have to consider or do not understand. However, through my contacts at various levels of State government, I also know that the Governor and Texas Legislature are often only provided with information that benefits certain State agencies or organizations. This leads to decisions being made without the key decision makers knowing all the facts.

A. The Current Methodology & Why It Is Failing

At the State level, the method for handling the border issue has been to treat it as an immigration problem. This thought process lends to the belief and operational mentality that this is a federal issue with few enforcement options at the state level. Utilizing this train of thought is a method that provides no real avenue of success in defeating the transnational criminal organizations we face. We must abandon the operational mindset of mirroring the federal approach to this problem and replace it with a new method that focuses on the use of state law to dismantle cartel operations in Texas.

The Goliad County Sheriff's Office is gifted with a prosecutor who is willing to prosecute criminals to the fullest extent of the law. As a result, the GCSO files Engaging In Organized Criminal Activity on drivers and illegal alien passengers alike. We do not turn illegal aliens over to Border Patrol until prosecution and/or time served is completed. Unfortunately, this is not the case in all jurisdictions, which leads to an advantage for criminal organizations who quickly learn which counties will or will not prosecute them and their human merchandise.

Historically, problems at the border were temporarily resolved by sending the Texas Rangers to use whatever means necessary to bring an end to criminal activities and violence. More recently, the issue has been tasked to DPS. Unfortunately, the most recent methodology has led to the catching of illegal aliens who are then released into the United States anyway.

Currently, if DPS encounters a smuggler, the smuggler is arrested. However, most illegal aliens encountered by DPS are turned over to Border Patrol. Some are deported, but many are released into the US by the federal government.

The methodology currently in use by state law enforcement is counterproductive. We must keep in mind that the object of any smuggling operation is to make money. Mexican cartels smuggle a variety of commodities such as drugs and slaves in order to maintain a revenue stream. Illegal aliens are smuggled into the US for an initial fee. Once they reach Houston, the illegal aliens discover that in order to be free they must pay additional money to the cartels. The vast majority cannot afford this second payment, as their families have exhausted their savings making the initial payment to the cartel. I found a letter in a house for sex slaves that described how it takes eight to thirteen years to purchase your freedom once you are smuggled into the US.

By turning illegal aliens over to federal agents, there are two primary outcomes. One is deportation to Mexico or their country of origin, where the illegal aliens are then back in the

hands of cartels and smuggled into the US again. The other is for federal agents to process and release them into the US, where they continue into the custody of the cartel and their operatives in the US. Either way, the cartels continue to generate revenue.

As long as the cartels continue to generate revenue through smuggling activity, there is no true deterrent to conducting their illicit business in Texas. Since the current methodology of conducting law enforcement operations associated with transnational criminal activity does not deny cartels a reliable revenue stream, we should not expect acceptable results from these efforts.

B. Recommendations For Another Methodology

In an effort to deny transnational criminal organizations a reliable revenue stream in Texas, I recommend the following actions:

- Reconstitute the Texas Department of Homeland Security – This organization should be a stand-alone agency with the specific mission of denying transnational criminal organizations with the ability to conduct business in Texas, thereby creating a more secure border between Texas and Mexico. While this organization should work in cooperation with other state agencies like DPS and the Texas Attorney General's Office, it should be independent in order to provide flexibility and prevent stagnation due to established institutional limitations and politics.

  The Texas Department of Homeland Security should consist of interdiction officers, investigators, intelligence agents, prosecutors, and support staff. It could also be augmented with Task Force Officers (TFO) who work for local agencies but are assigned to work part or full time with the agency.

  Like federal agencies, the Texas Department of Homeland Security should be authorized to adopt cases from local agencies for investigation and prosecution. This could prevent the problem of a lack of consistency in the prosecution of criminals associated with organized crime.

- Create border prosecution specialty courts and districts. These courts would have appointed or elected judges and would be responsible for adjudicating cases presented by the Texas Department of Homeland Security.

- Intelligence/Information functions should be placed under the authority of the Texas Department of Homeland Security, with an emphasis of sharing **actionable** intelligence with partner agencies. The current means of intelligence sharing consists of local agencies reporting dated information to DPS. This information is then processed and sent out in limited quantity to local agencies through the JOIC. Unfortunately, almost none of the information is actionable. Sheriff's Offices on the Gulf Coast do not need to know that someone in El Paso is passing hot checks, or that someone is stealing packages off porches in San Marcos. There needs to be a focus on providing actionable intelligence to agencies who assign liaisons and participate in enforcement and investigative efforts with the state agency.

- In the past, there were multiple narcotics taskforces across the state. These were eventually absorbed by DPS and done away with. This concept should be started again. However, if this is done there should be funding provided for administrative/financial oversight in order ensure funds are managed properly. Local agencies should be able to come together on a temporary or semi-permanent basis in order to target specific criminal activity associated with organized crime. These taskforces should work in conjunction with the Texas Department of Homeland Security, DPS, etc., and should be required to share intel with state partners if they are to receive funding. However, each taskforce should work under their own direction but within the scope of the overall mission set by the Governor's Office and Texas DHS. This will prevent operational stagnation due to various factors facing state level agencies.

III. Conclusion

While Governor Abbott and the Texas Legislature have provided funding and a mission of securing the Texas/Mexico border, efforts thus far have been too disjointed to accomplish the goal. DPS has intercepted and arrested many smugglers who are prosecuted as a result of their efforts. They have also intercepted and prevented many drugs from being sold in the US. The Operation Lone Star Taskforce, in cooperation with Border Patrol and HSI greatly diminished the smuggling operations north of and within the RGV sector. However, for all the good law enforcement has done, we have failed to bring the issue to an end or get it reduced to a manageable level state wide.

In order to succeed in our mission, we must ignore the federal aspects of the immigration process, avoid conducting enforcement efforts that fall under federal jurisdiction and could provide federal authorities with the opportunity to prosecute state or local government employees and officials, and concentrate on enforcing state laws that will deny criminal organizations with the ability to remain profitable in Texas. Only then will we deter transnational criminal activity and begin to dismantle the existing infrastructure that cartels have established throughout Texas.

While it is beyond both my authority and capacity to handle immigration matters, it is my desire to see transnational criminal organizations pushed out of Texas through aggressive and innovative enforcement actions at the state and local level.

God Bless Texas



"…For everyone to whom much is given, from him much will be required; and to whom much has been committed, of him they will ask the more."
Luke 12:48

GOVERNOR GREG ABBOTT

September 21, 2022

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

The Honorable Kamala D. Harris
Vice President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden and Vice President Harris:

Mexican drug cartels terrorize the United States and its citizens every day, leaving thousands of dead bodies in their wake. Their latest weapons of choice are the millions of tiny pills laced with fentanyl that they pour across our southern border. As a result, it is necessary, now more than ever, for you to designate the Sinaloa Cartel, the Jalisco New Generation Cartel, and any similarly situated Mexican drug cartels as foreign terrorist organizations under Section 219 of the Immigration and Nationality Act (INA). This move would help us fight back against these terrorists and disrupt their deadly attacks on America.

On this problem, we appear to agree:

> **Executive Order**
>
> I, JOSEPH R. BIDEN JR., President of the United States of America, find that the trafficking into the United States of illicit drugs, including fentanyl and other synthetic opioids, is causing the deaths of tens of thousands of Americans annually, as well as countless more non-fatal overdoses with their own tragic human toll. Drug cartels, transnational criminal organizations, and their facilitators are the primary sources of illicit drugs and precursor chemicals that fuel the current opioid epidemic, as well as drug-related violence that harms our communities. ... I hereby declare a national emergency to deal with that threat.

Fentanyl *is* a scourge that is killing thousands of Americans. Drug cartels *are* the major suppliers of this substance. And the problem *is* a national emergency.

Yet, since your Executive Order 14059 declared a national emergency on December 15, 2021, the number of monthly deaths from fentanyl has continued to climb. According to the Centers for Disease Control and Prevention, more than 75,000 Americans died from drug overdoses that involved fentanyl between February 2021 and February 2022. To put that in context, the National Consortium for the Study of Terrorism and Responses to Terrorism reports there were 3,905 deaths of Americans in terrorist attacks worldwide between 1995 and 2019, most of them occurring on September 11, 2001. In this light, the magnitude of the terrorism related to the introduction of fentanyl by Mexican drug cartels is astonishing.

Moreover, these statistics underscore that fentanyl is a "chemical agent" used by Mexican drug cartels who know that it "endanger[s], directly or indirectly, the safety of one or more individuals." 8 U.S.C. § 1182(a)(3)(B)(iii)(V). This is "terrorist activity" within the meaning of the INA and fulfills the requirements for designation under Section 219.

The reason for the explosion of fentanyl deaths in America is that the Mexican drug cartels are trafficking fentanyl across our southern border at a greater rate than ever, thanks to your open-border policies. As the Drug Enforcement Agency (DEA) explained just over a week ago, "[f]entanyl available in the United States is *primarily supplied* by two criminal drug networks, the Sinaloa Cartel and the Jalisco New Generation Cartel" (emphasis added).

Texas is already doing more than its fair share to stem the tide of fentanyl, not to mention the trafficking and sexual exploitation of women and children, that these cartels inflict. While our Department of Public Safety has seized more than 336 million lethal doses of fentanyl since March 2021—enough to kill every man, woman, and child in the U.S.—our nation needs the federal government to protect Americans from foreign threats, too.

No doubt it is our entire nation that needs you to fulfill this critical duty. According to your appointed DEA Administrator, Anne Milgram, "Fentanyl is the single deadliest drug threat our nation has ever encountered. Fentanyl is everywhere. From large metropolitan areas to rural America, no community is safe from this poison."

Further, these cartels are violent, causing chaos throughout Mexico. Mexico's Commission for the Defense and Promotion of Human Rights estimated that violence caused a nearly fivefold increase in Mexicans forced to move from their homes in 2021. This violence is attributed to the broadening reach of the Mexican drug cartels, who must expand their influence as they battle for territory necessary to massively expand their fentanyl trafficking into the U.S.

Today, I am issuing Executive Order GA-42 to designate Mexican drug cartels as foreign terrorist organizations and to redouble efforts by the Texas Department of Public Safety to dismantle their terrorist schemes in Texas. But the cartels' destruction reaches far beyond our state line.

Mr. President and Madam Vice-President, if we agree on the problem—and your emergency declaration and your own DEA Administrator indicate that we do—then more must be done for our citizens. One way you can take an effective, direct step to address the scourge of fentanyl is by designating the Sinaloa Cartel, the Jalisco New Generation Cartel, and any similarly situated Mexican drug cartels as foreign terrorist organizations under Section 219 of the INA, 8 U.S.C. § 1189. Cartel assets could then be frozen, weakening the financial support of trafficking activities. In addition, federal investigators and prosecutors could aggressively pursue the enhanced criminal sentences that apply to drug traffickers who fund foreign terrorist organizations. Designation, apprehension, and prosecution would also heighten public awareness of the cartels' trafficking of deadly fentanyl, while signaling to the international community that the United States will not tolerate terrorists who poison our citizens.

In an April 2021 letter to you both, I made this request for designation. There was no action, no response. But if you are ready to make Americans safer, it will be better late than never. As the number of American deaths continues to rise due to the cartels' terrorist behavior, now is the time to act. We do not have more time to waste.

Sincerely,

Greg Abbott
Governor

GA:mhd

cc: The Honorable Antony J. Blinken, U.S. Secretary of State
The Honorable Merrick B. Garland, U.S. Attorney General
The Honorable Janet L. Yellen, U.S. Secretary of the Treasury

GOVERNOR GREG ABBOTT

September 21, 2022

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:30PM O'CLOCK
SEP 21 2022
Secretary of State

The Honorable John B. Scott
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

> Executive Order No. GA-42 relating to designation of Mexican drug cartels as foreign terrorist organizations.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD:gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
September 21, 2022

EXECUTIVE ORDER
GA 42

Relating to designation of Mexican drug cartels as foreign terrorist organizations.

WHEREAS, Mexican drug cartels are responsible for trafficking hundreds of millions of lethal doses of fentanyl into Texas and the United States; and

WHEREAS, over 1,600 Texans were fatally poisoned by drugs containing fentanyl in 2021, representing an increase of more than 680 percent since 2018, and fentanyl's death toll continues to rise in 2022; and

WHEREAS, Mexican drug cartels also smuggle humans across the Texas-Mexico border and subject them to sexual assault, human trafficking, assault, extortion, and other dehumanizing, violent, and heinous acts; and

WHEREAS, deadly violence is associated with the Mexican drug cartels, who are fighting for the territory needed to expand their influence in the United States; and

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, which has been amended and renewed in each subsequent month effective through today, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, through Operation Lone Star, I have deployed thousands of brave men and women from the Texas National Guard and the Texas Department of Public Safety to secure the border, and they have seized over 336 million lethal doses of fentanyl trafficked through Texas since March 2021; and

WHEREAS, the head of the federal Drug Enforcement Administration has declared that "[f]entanyl is the single deadliest drug threat our nation has ever encountered," and that the "[f]entanyl available in the United States is primarily supplied by two criminal drug networks, the Sinaloa Cartel and the Jalisco New Generation Cartel"; and

WHEREAS, even though President Biden has declared a national emergency due to "trafficking into the United States of illicit drugs, including fentanyl and other synthetic opioids," his Administration still has not designated the Mexican drug cartels as foreign terrorist organizations under Section 219 of the Immigration and Nationality Act, 8 U.S.C. § 1189; and

WHEREAS, designating the Mexican drug cartels as foreign terrorist organizations will target them for enhanced apprehension, prosecution, and disruption, while heightening awareness of their deadly activities for our citizens and the international community;

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:30 PM O'CLOCK

SEP 21 2022

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby designate as foreign terrorist organizations the Sinaloa Cartel, the Jalisco New Generation Cartel, and any similarly situated Mexican drug cartels who may be identified in subsequent proclamations.

I further order that the Texas Department of Public Safety shall do the following:

Order No. 1 Establish a Mexican Cartel Division within the Texas Fusion Center to collect and analyze intelligence that will enable further apprehension, prosecution, and disruption of these foreign terrorist organizations.

Order No. 2 Identify, arrest, and impede the gangs in Texas that support the drug and human smuggling operations of these foreign terrorist organizations.

Order No. 3 Conduct multi-jurisdictional investigations of foreign terrorist organizations operating in Texas to support criminal prosecutions here and in other States.

Order No. 4 Conduct multi-jurisdictional investigations of transnational and Texas-based gangs that support the smuggling operations of foreign terrorist organizations.

Order No. 5 Target, seize, and dismantle the infrastructure, assets, vehicles, and buildings used by foreign terrorist organizations to smuggle drugs and people into and throughout Texas.

Order No. 6 Enhance southbound criminal interdiction operations resulting in the seizure of bulk cash and other assets being smuggled into Mexico.

Order No. 7 Intensify efforts under Operation Lone Star focused on detecting and interdicting transnational criminal activity between the ports of entry.

This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the
21st day of September, 2022.

GREG ABBOTT
Governor

ATTESTED BY:

JOHN B. SCOTT
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:30pm O'CLOCK

SEP 21 2022

GOVERNOR GREG ABBOTT

December 19, 2023

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:30 PM O'CLOCK
DEC 19 2023
Jane Nelson
Secretary of State

The Honorable Jane Nelson
Secretary of State
State Capitol, Room 1E.8
Austin, Texas 78701

Dear Secretary Nelson:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation renewing the disaster proclamation concerning border security.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD:gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas–Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Caldwell, Cameron, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 19th day of December, 2023.

GREG ABBOTT
Governor

ATTESTED BY:

JANE NELSON
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:30PM O'CLOCK

DEC 19 2023

COMMONWEALTH of VIRGINIA
Office of the Attorney General

Jason S. Miyares
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
711

February 8, 2023

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

The Honorable Antony J. Blinken
Secretary of State
Department of State
2201 C Street NW
Washington, D.C. 20520

Dear President Biden and Secretary Blinken:

Drug overdoses have killed more than 100,000 Americans over the past year. Sixty-six percent of those deaths were related to synthetic opioids like fentanyl.[1] I write to ask you to exercise power conferred on you by Congress to take swift and decisive action to abate this deadly scourge.

The cause of this scourge is well known. The Drug Enforcement Administration (DEA) reports that Mexican drug cartels, including the Sinaloa Cartel and the Jalisco New Generation Cartel (CJNG), import dangerous raw materials from China, use them to produce deadly synthetic opioids at low cost, and unlawfully transport those opioids into the United States.[2] Between October 2021 and June 2022, U.S. Customs and Border Protection seized 8,425 pounds of fentanyl

[1] Press Release, DEA, DEA Warns of Increase in Mass-Overdose Events Involving Deadly Fentanyl, (Apr. 6, 2022), https://www.dea.gov/press-releases/2022/04/06/dea-warns-increase-mass-overdose-events-involving-deadly-fentanyl.

[2] DEA Washington Division, Public Information Office, *Fentanyl Deaths Climbing, DEA Washington Continues the Fight*, (Feb. 16, 2022), https://www.dea.gov/stories/2022/2022-02/2022-02-16/fentanyl-deaths-climbing-dea-washington-continues-fight.

being smuggled into the United States.[3] Both the Sinaloa Cartel and the CJNG have expanded their deadly business into Virginia, where fatal overdoses have increased by forty percent since 2021.[4] These foreign drugs have created twin public-health and national-security crises of unparalleled magnitude.

The Mexican drug cartels threaten our national security beyond the sale of these deadly drugs. Over the past decade, Mexican drug cartels have developed well-organized armed forces to protect their reprehensible trade from rivals and from the Mexican government. The existence of such forces just across our southwestern land border, and the Mexican government's inability to control them, pose a threat to our national security far greater than a typical drug-trafficking enterprise. That threat is made greater still by the known links between the Mexican drug cartels and Foreign Terrorist Organizations (FTO) like Hezbollah who already intend to do us harm.[5] Our national security requires the federal government to disrupt this collaboration between cartels and terrorist groups.

DEA Administrator Anne Milgram has emphatically declared that that "[f]entanyl is the single deadliest drug threat our nation has ever faced."[6] As the Washington Post recently reported, "an estimated 196 Americans are now dying *each day* from the drug—the equivalent of a fully loaded Boeing 757-200 crashing and killing everyone on board."[7] The Mexican drug cartels are essentially conducting chemical warfare on everyday Americans affecting every community, town, and city in our nation. It is time to respond.

That is why I joined seventeen other state attorneys general in calling on you to treat fentanyl as the danger it truly is and declare it a weapon of mass destruction.[8] To date, no action has been taken.

The same cartels who produce and traffic this dangerous chemical are also assassinating rivals and government officials, ambushing, and killing Americans at the border, and engaging in

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[3] Press Release, U.S. Attorney's Office, Southern District of California, Fentanyl Seizures at Border Continue to Spike, Making San Diego a National Epicenter for Fentanyl Trafficking; U.S. Attorney's Office Prioritizes Prosecutions and Prevention Programs, (Aug. 11, 2022), https://www.justice.gov/usao-sdca/pr/fentanyl-seizures-border-continue-spike-making-san-diego-national-epicenter-fentanyl.

[4] See *supra* note 2.

[5] See generally Matthew Levitt, Hezbollah: The Global Footprint of Lebanon's Party of God (2013). As early as 2008, the DEA had linked 19 of the 43 existing FTOs designated under 8 U.S.C. § 1189 to some aspect of the global drug trade and estimated that up to 60 percent of them are connected with the trade of illegal narcotics. See Michael Braun, *Drug Trafficking and Middle Eastern Terrorist Groups: A Growing Nexus?*, (July 5, 2008), Wash. Inst. for Near East Pol'y, https://www.washingtoninstitute.org/policy-analysis/drug-trafficking-and-middle-eastern-terrorist-groups-growing-nexus.

[6] *Fentanyl Awareness*, DEA, https://www.dea.gov/fentanylawareness.

[7] Nick Mirroff et al., *Cause of Death: Washington Faltered as Fentanyl Gripped America*, Wash. Post (Dec. 12, 2022), https://www.washingtonpost.com/investigations/interactive/2022/dea-fentanyl-failure/ (emphasis added).

[8] Press Release, Office of the Attorney General of Virginia, *Attorney General Miyares Urges President Biden to Classify Fentanyl a Weapon of Mass Destruction* (Sept. 15, 2022), https://www.oag.state.va.us/media-center/news-releases/2453-september-15-2022-attorney-general-miyares-urges-president-biden-to-classify-fentanyl-a-weapon-of-mass-destruction.

an armed insurgency against the Mexican government.[9] This dangerous terrorist activity occurring at our border will not abate unless we escalate our response.

Because of the severe threat to our nation and our States posed by these cartels, I hereby request that the Sinaloa Cartel, CJNG, and other similarly situated Mexican drug cartels be designated as Foreign Terrorist Organizations pursuant to 8 U.S.C. § 1189. Designating the cartels as FTOs will give state and federal law enforcement agencies increased powers to freeze cartel assets, deny entry to cartel members, and allow prosecutors to pursue tougher punishments against those who provide material support to the cartels.

Traditional counter-narcotics efforts are inadequate to address the threat posed by the Mexican drug cartels. The Kingpin Act, for instance, focuses too narrowly on financial transactions with Significant Foreign Narcotics Traffickers who are already designated as such. This narrow law is ill-suited to the problem at hand. Mexican drug cartels have diversified their operations beyond mere narcotics trafficking to include seemingly legitimate enterprises like the avocado trade, gasoline pipelines, gold mines, and even supermarkets.[10] Unless these cartel-driven enterprises have directly engaged in narcotics trafficking, they escape designation under the Kingpin Act and can fund the cartels' terrorist activity with relative impunity. Now that the cartels have made widespread use of assassinations and armed insurgency against the Mexican government, FTO designation is the only way to disrupt these increasingly violent cartel tactics and weaken their criminal enterprise.

The cartels' recent embrace of extreme violence further justifies their designation as an FTO. Under 8 U.S.C. § 1189, the Secretary of State may designate an organization as an FTO where: (1) it is a foreign organization, (2) it engages in terrorist activity as defined in 8 U.S.C. § 1182(a)(3)(B) . . ., and (3) the terrorist activity or terrorism of the organization threatens the security of the United States or its nationals. 8 U.S.C. § 1182(a)(3)(B) further provides that "terrorist activity" means

> any activity which is unlawful under the laws of the place where it is committed. . . . and which involves [among other things] . . . . an assassination, or the use of any . . . chemical agent. . . or explosive, firearm, or other weapon or dangerous device . . . with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

Mexican drug cartels are intentionally endangering "the safety of one or more individuals" in host of ways. First and foremost, the cartels are importing a chemical agent—synthetic opioids like fentanyl—into the United States to endanger the safety of the American people. The horrifying consequences of these drugs are known to all, and the cartels' continued trafficking of these drugs

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[9] See Robert Chesney, *Should Mexican Cartels Be Designated as Terrorist Organizations?*, Lawfare (Mar. 31, 2011, 6:38 PM), https://www.lawfareblog.com/should-mexican-cartels-be-designated-terrorist-organizations; see also Jalisco Cartel New Generation, Insight Crime (July 8, 2022), https://insightcrime.org/mexico-organized-crime-news/jalisco-cartel-new-generation/.

[10] See, *e.g.*, Kate Linthicum, *Inside the Bloody Cartel War for Mexico's Multi-Billion Dollar Avocado Industry*, L.A. Times (Nov. 21, 2019), https://www.latimes.com/world-nation/story/2019-11-20/mexico-cartel-violence-avocados.

in the face of these consequences demonstrates their intention to endanger, or their reckless disregard for, the safety of Americans.

Moreover, since 2019, the Mexican drug cartels have also mounted an increasingly violent insurgency against the Mexican government ranging from assassinations of public officials to full-scale military confrontations. In one particularly illustrative incident, gunman from the Sinaloa Cartel openly drove trucks with mounted machine guns and exchanged fire with security forces for hours, all as part of a successful campaign to secure the release of the drug lord Ovidio Guzman.[11]

The national security threats posed by this ongoing campaign of violence are particularly acute. Clashes between gunman from rival cartels claimed the lives of 9 U.S. citizens just across the U.S. border on November 4, 2019.[12] The cartels' intense violence goes far beyond mere resistance to interference with their drug trafficking and now encompasses a general effort to intimidate rivals and expand their influence. This violence, which necessarily involves using firearms and explosives to kill security forces, plainly constitutes terrorist activity.

Collectively, the destructive status quo caused by fentanyl and violence is costing hundreds of thousands of American lives each year. This catastrophic loss of life is inexcusable, yet it has received an anemic response from the federal government. To protect Americans from these terrorist organizations,[13] you must take decisive action against the Mexican drug cartels by designating the Sinaloa Cartel, the Jalisco New Generation Cartel, and other similarly situated

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[11] See Sinaloa Cartel, Insight Crime (May 4, 2021), https://insightcrime.org/mexico-organized-crime-news/sinaloa-cartel-profile/; see also Ioan Grillo, *How the Sinaloa Cartel Bested the Mexican Army*, Time (Oct. 18, 2019), https://time.com/5705358/sinaloa-cartel-mexico-culiacan/ ("They openly drove in trucks with mounted machine guns, blockaded streets flashing their Kalashnikovs and burned trucks unleashing plumes of smoke like it was a scene in Syria. They took control of the strategic points in the metro area, shut down the airport, roads, and government buildings, and exchanged fire with security forces for hours leaving at least eight people dead. . . . And in this unusual battle, the Sinaloa Cartel won. . . . after hours of cartel chaos, Mexico's federal government gave soldiers the go ahead to release him. It capitulated.").

[12] Louis Casiano, *Mexico: 7 Detained in Drug-Cartel Massacre that Killed 9 Americans*, Fox News "(Dec. 31, 2019), https://www.foxnews.com/world/mexico-7-detained-in-drug-cartel-massacre-that-killed-9-americans; see also Mark Osborne, *Multiple People Arrested in Deadly Ambush of 9 Americans in Mexico, Authorities Say*, ABC News, (Dec. 1, 2019) https://abcnews.go.com/International/mexican-authorities-arrest-individuals-related-ambush-killed-americans/story?id=67426093.

[13] An FTO declaration would have no effect on individual immigration-law claims made by individuals coming to the United States from Mexico. The Department of Justice's longstanding position is that there "is no indication whatsoever that the designation of a group as a FTO was intended to, or should enhance, an individual asylum claim." Brief for Respondent at 23, Saldarriaga v. Gonzales, 241 Fed. Appx. 432 (9th Cir. 2007) (No. 05-72841), 2005 WL 4122040. In order to designate a group as an FTO, the Secretary of State must find, among other things, that "the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States." 8 U.S.C. § 1189(a)(1). A group designated as an FTO could pose a threat to the United States or its nationals but not pose a threat to nationals of other countries. The designation of a group as a FTO therefore has no bearing on a petitioner's claim that he was persecuted or that he has a well-founded fear of persecution. See 8 U.S.C. § 1101(a)(42)(A) (to be eligible for asylum, a petitioner must demonstrate "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion"). This would be even more true with respect to a request for deferral of removal under the Convention Against Torture (CAT), as the CAT standard "is narrower than the asylum standard, because an applicant must show that it is 'more likely than not' that he will be tortured." *Khup v. Ashcroft*, 376 F.3d 898, 906 (9th Cir. 2004).

cartels as foreign terrorist organizations under 8 U.S.C. § 1189. The moment you choose to do so, my office will work with the U.S. Attorneys of Virginia's Eastern and Western Districts to bring material-support prosecutions at the state and federal level wherever they may be appropriate.

Sincerely,

Jason S. Miyares
Attorney General of Virginia

Steve Marshall
Attorney General
State of Alabama

Treg Taylor
Attorney General
State of Alaska

Tim Griffin
Attorney General
State of Arkansas

Ashley Moody
Attorney General
State of Florida

Christopher M. Carr
Attorney General
State of Georgia

Todd Rokita
Attorney General
State of Indiana

Brenna Bird
Attorney General
State of Iowa

Daniel Cameron
Attorney General
Commonwealth of Kentucky



Jeff Landry
Attorney General
State of Louisiana



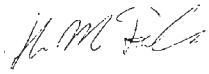
Andrew Bailey
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Attorney General
State of Tennessee



Ken Paxton
Attorney General
State of Texas



Sean D. Reyes
Attorney General
State of Utah



Patrick Morrisey
Attorney General
State of West Virginia

September 14, 2022

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Dear Mr. President:

As attorneys general of our respective states, we are deeply involved in the fight to end the national opioid crisis. Collectively, as a group on a bipartisan basis, we recently concluded several large, historic settlements that will give each of us resources to battle this crisis. As you well know, the national opioid crisis is not and has not been a static event. Instead, the opioid epidemic in this country has evolved over time from prescription opioids to heroin to synthetic opioids, namely fentanyl. Currently, fentanyl is exacerbating the death toll increasing exponentially every year for the last several years. The purpose of this letter is to propose an unorthodox solution that may help abate or at least slow the crisis's trajectory while also protecting Americans from a mass casualty event from fentanyl. We ask that you consider classifying illegal fentanyl as a weapon of mass destruction or, if you conclude you do not have authority to do so, urge Congress to pass legislation to do so.

According to the New York Times, the supply of tainted pills, crudely pressed and shipped to the U.S. by Mexican cartels using chemicals from China and India, has escalated dramatically in recent years.[1] While record amounts of fentanyl have been interdicted by law enforcement in the last year,[2] the historic number of overdose deaths from fentanyl demonstrate that large amounts of fentanyl are still entering the United States. Enough fentanyl has been seized in the last year to kill every man, woman, and child in the United States several times over. Indeed, given fentanyl's lethality, the amounts being interdicted and seized are inconsistent with what one would expect from drug trafficking activity and are indicative of either purposeful conspiracy to murder Americans or an effort to stockpile a dangerous chemical weapon.

[1] https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html
[2] https://www.dea.gov/press-releases/2022/04/06/dea-warns-increase-mass-overdose-events-involving-deadly-fentanyl; https://www.cbp.gov/newsroom/local-media-release/cbp-officers-south-texas-ports-entry-post-significant-increases-0 ; https://gov.texas.gov/news/post/operation-lone-star-seizing-record-amounts-of-fentanyl-dps-crime-lab-finds-fentanyl-in-most-street-drugs .

Due to the low cost of production, inherent lethality and vast availability of the substance, fentanyl would be an ideal choice for bad actors to use as a chemical weapon. We are aware of scenarios that different federal and state agencies have considered utilizing and causing mass casualty events. Just two milligrams of fentanyl is needed to kill an adult, and it can easily be placed in other substances. In fact, it already is—according to reports, at least one-third of illicitly manufactured pills are contaminated with fentanyl—users often have no idea that they are consuming this poison.[3] In addition to different government agencies looking at fentanyl related scenarios, fentanyl has already been used as a weapon—the Russian army used it to end a hostage crisis two decades ago, killing more than 120 hostages in the process.[4] The threat of a state enemy using this drug to do harm to the American people cannot be understated.

Designating fentanyl as a weapon of mass destruction would require the Department of Homeland Security and the DEA to coordinate with other agencies or parts of agencies, including the Department of Defense, about fentanyl. Thinking about curbing the problem in different, new ways may disrupt what the foreign companies and drug cartels involved are doing or at least make it more expensive or difficult. While those agencies would develop federal policy, one could imagine techniques utilized to prevent proliferation or to detect the transportation of existing weapons of mass destruction could be used with fentanyl.

We understand that there are two main criticisms against declaring fentanyl a weapon of mass destruction: (1) that fentanyl is a drug control problem, and we are attempting to solve a drug control problem by classifying the substance, which has legitimate, limited uses as a weapon; and (2) that no state or non-state actor has weaponized fentanyl other than the Russian incident discussed above. As to the first criticism, the fact that classifying fentanyl would have a ancillary effect of preventing the deaths of tens of thousands of Americans would be an additional, beneficial reason to classify fentanyl. Given fentanyl's lethality, low cost, and abundant availability, waiting for some state or non-state actor to utilize it as weapon before it is classified as such seems to be the same type of reasoning that kept the government from investigating foreign nationals learning to fly, but not land planes in the lead up to September 11th.

We are deeply troubled by the threat that fentanyl poses to America. The seriousness of that threat is informed by the fact that in the 12-month period ending in Feb. 2022, more than 75,000 Americans died from overdose of synthetic opioids, mainly fentanyl.[5] With statistics this staggering, we cannot forget that each number represents a human life, and thousands of families and loved ones struggling with incomprehensible loss. Fentanyl is the number one killer of adults 18-45.

Like many other states across this country, fentanyl has hit the State of Florida hard, and the death toll is increasing at an alarming, exponential rate. In 2020, fentanyl related overdose

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[3] https://www.npr.org/sections/health-shots/2022/04/12/1092309418/teen-drug-overdose-deaths-rose-sharply-in-2020-driven-by-fentanyl-laced-pills

[4] https://www.nytimes.com/2002/10/29/world/hostage-drama-in-moscow-the-toxic-agent-us-suspects-opiate-in-gas-in-russia-raid.html; https://www.baltimoresun.com/news/bs-xpm-2002-10-31-0210310178-story.html.

[5] https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm

deaths increased by 59 percent to 5,806.[6] In the first six months of 2021, deaths related to fentanyl increased again to more than 3,210.[7] Last month, within 24 hours, 19 people overdosed on fentanyl with nine people dying in rural Gadsden County, Florida.[8] Only seven days later, police in Tampa responded to a convenience store where seven people were found unresponsive after unknowingly overdosing on fentanyl.[9] That followed other mass fentanyl poisoning events across the country, including another overdose event in Florida in March involving five vacationing West Point cadets, including two who were simply attempting to resuscitate their comrades.[10]

During the same period, fentanyl-involved deaths increased 18.3 percent in Connecticut from 2019 to 2020, and another 13.2 percent from 2020 to 2021. In 2021, 1,312 Connecticut accidental intoxication deaths involved fentanyl.[11] And like Florida, Connecticut has experienced its share of horrific stories involving fentanyl. As just one example, in January of this year, police found 100 bags of fentanyl in the bedroom of a 13-year-old boy who suffered a fatal fentanyl overdose at a Hartford, Connecticut school. Police found an additional 60 bags of highly potent fentanyl hidden in areas throughout his school.[12]

Treating this solely as a narcotics control problem has failed to curb the proliferation of increasing quantities of chemicals that can cause a mass casualty event. Your own DEA Administrator has called fentanyl "the deadliest threat [the DEA] ha[s] ever seen."[13] We should treat it as such— thus bold action must be taken. We must not sit idly by until a terrorist chooses to inflict harm using this substance on a large group of Americans—our countrymen are already dying from this poison. We cannot wait for tragedy to strike when proactive steps can be taken now to preserve American lives. We urge you take immediate and decisive action and declare fentanyl a weapon of mass destruction.

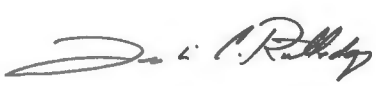
Sincerely,

Ashley Moody
Florida Attorney General

William Tong
Connecticut Attorney General

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[6] https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2020-Annual-Drug-Report-FINAL.aspx.
[7] https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2021-Interim-Drug-Report-FINAL.aspx.
[8] https://www.tallahassee.com/story/news/2022/07/05/gadsden-county-fentanyl-drugs-overdose-deaths-florida-quincy-havana-narcan-chattahoochee-gretna/7808948001/. Gadsden County is a small North Florida county that was spared most of the worst of the opioid crisis.
[9] https://www.wfla.com/news/hillsborough-county/7-found-unresponsive-in-tampa-after-consuming-bad-drugs-police-say/
[10] https://www.washingtonpost.com/nation/2022/03/12/west-point-cadets-overdose-fentanyl/
[11] https://portal.ct.gov/-/media/OCME/Statistics/Calendar-Years.pdf
[12] https://abcnews.go.com/Health/100-bags-fentanyl-found-bedroom-13-year-died/story?id=82490833
[13] https://video.foxnews.com/v/6309584306112#sp=show-clips.



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Daniel Cameron
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Austin Knudsen
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Nebraska Attorney General



Aaron D. Ford
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John M. Formella
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Hector Balderas
New Mexico Attorney General



John O'Connor
Oklahoma Attorney General



Jonathan Skrmetti
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Jason Miyares
Virginia Attorney General

Patrick Morrisey
West Virginia Attorney General

NATIONAL SHERIFFS' ASSOCIATION

Written Statement for the Record

Sheriff David N. Favro
Clinton County Sheriff's Office
Clinton County, New York
National Sheriffs' Association

Before the Committee on Homeland Security
Subcommittee on Emergency Management and Technology
United States House of Representatives

December 5, 2023

Thank you Chairman D'Esposito, Ranking Member Carter, and distinguished members of the Subcommittee on Emergency Management and Technology for holding this hearing and allowing me the opportunity to address you regarding "Protecting our Preparedness."

I'm David N. Favro, and I serve as the Sheriff of Clinton County, New York. My career in Law Enforcement began in July of 1982, and I've dedicated over 41 years to the safety and well-being of the residents and visitors of Clinton County. For the last 21 years, I've been honored to hold the position of the people's elected Sheriff. The mission of the Clinton County Sheriff's Office is to enhance safety and improve the quality of life in our community. We are committed to delivering services with pride and excellence, fostering a strong partnership with our community.

Clinton County is the most northeastern point in New York.

- Population approximately 80,000 (2021 census)
- 97.6% of residents are native to Clinton County (2021 census)
- 1,117.53 square miles
- Northern boundary with Canada
- Eastern boundary is Lake Champlain (the sixth great lake)
- Over 70 miles of lake shore
- Approximately 30 miles international border
- Interstate 87 is a main traffic point from Canada to New York City

The Border Crisis significantly strains Emergency Management in our small rural community. A notable surge in transient population, funneled thought a small rural community whose residents are primarily native to the area, raises concerns and has led to an uptick in emergency response calls.

Like many Sheriffs' Offices, we face staffing shortages (22 deputies in Clinton County Sheriff's Office) due to challenges in hiring and retention, partly due to lower pay compared to other law enforcement agencies. Responding to reports of "strangers" on private property may tie up one or two units, impacting our ability to address other safety needs. Adding to the complexity, high-

speed vehicle pursuits involving migrants are on the rise. A recent incident caused bodily injuries and property damage in what resulted as the busiest traffic point in our small rural county. This highlights the need for urgent attention to the Border Crisis' impact on our emergency capabilities and calls for strategic solutions to protect our community and law enforcement resources.

Key Statistics;
Got aways are up 99% from 499 in 2023 to 995 in fiscal year 2024. This is concerning.
The Swanton Border Patrol sector of the United States Customs and Border Patrol oversees a vast expanse of 295 miles along the Northern Border. Despite covering 70% of all northern border encounters, this sector operates with only 15% of the staffing allocated to the entire Northern Border region. 73% of encounters in the Swanton sector are single adults, 27% are family units with less than 1/2 % unaccompanied children.

Fatalities = 2
Rescues = 29
Assaults = 9
Drive Through's =44

Emergency management;
911 call centers nationwide have experienced "recognizable" increases in calls for service. Since 911 callers' migrant statuses are not questioned during incoming calls and when responding to an emergency calls, it is difficult to establish just what those actual numbers are. However, the challenges in rescues and general assistance requests have also intensified due to diverse language barriers.

Interagency Partnerships/Communications;
While substantial progress has been made, there remains a significant amount of work to be done. Operation Stonegarden has played a pivotal role by providing resources to the Border Patrol. This program enables local police agencies and sheriff offices to carry out active patrols along the Northern Border. In 2024, Clinton County was granted $300,000, to be shared with three other agencies, facilitating better collaboration, strengthening working relationships and increasing awareness among all area law enforcement regarding migrant activities within their jurisdictions. Continued financial support for federal grants, such as Operation Stonegarden, would enhance the capacity of local law enforcement to address security concerns linked to the open border.

Detention;
The Clinton County Jail is currently the only facility accepting detainees from Border Patrol. Many county jail refuse to accept federal detainees for a variety of reasons. Notably, the heightened conditions mandated by ICE Detention far surpass the requirements set by the New York State Commission on Corrections for our domestic detainees. The increased costs associated with maintaining two sets of jail standards, coupled with the arduous annual inspections without any reimbursement present overwhelming challenges. Without Clinton Count Jail, the staff of CBP would be depleting their resources by transporting detainees to facilities several hours away from the border.

The cost to house each federal detainee is $112 per day. Since the beginning of the year, the Clinton County Sheriff's Office has already recovered costs of over $2 Million housing expenses from the Federal government. Medical costs are in addition to, but not expected to exceed, the cost of housing.

Weather related concerns;
In Clinton County, we regularly experience temperatures falling -35 degrees below zero with a deadly wind-chill. Ponds and swamps freeze quickly and require conducting rescue missions with volunteer fire and rescue teams alongside Border Patrol and Sheriff Deputies. Tragically, two deaths have occurred among migrants attempting to traverse dark wooded terrain.

Migrants are arriving predominately from the southern border where they are accustomed to survivable temperatures with minimal clothing. Most do not realize how cold it can become, particularly at nighttime when they tend to move and cross without detection.

Migrants attempt to seek shelter in barns, sheds, basements, or even what they think may be unoccupied homes. We have responded to calls of residents awaking in the middle of the night to unfamiliar noises only to discover migrants that entered their home to get out of the weather.

Many communities across the country are facing a housing shortage for their local residents. The increase in migrants has created a shuffle effect for example, where communities are relocating their excess overage of migrants from one region to another. For example, we have all seen Texas relocating migrants New York City? What you do not see is New York then busing migrants to the northern border communities where there are literally no resources to assist these people. Some private organizations (Plattsburgh Cares) are providing essentials like food and clothing, as well as guidance and an occasional bus ticket to a different location of the migrants choosing.

Nationalities as Provided by CBP Regional Briefings;
CBP data shows that migrants arrive into the U.S. from 180 different countries. Similarly, Clinton County also sees a diverse group of migrants in its 1,117.53 mi^2. We have encountered individuals from 43 different countries.

Mexico - over 55%
India - 22.1%
Haiti, Romania and Guatemala - each under 4%.

Mr. Chairman in closing, the illegal migration into Northern New York is costing my office considerable time cycles and money. Moreover, it is taking away resources from the legal local residents and that is simply not fair to my constituents.

Law enforcement officers at the federal, state, and local levels are consistently confronting hazardous situations and criminal activities stemming directly from an open border that is being exploited by criminals. The National Sheriffs' Association has long voiced concerns about open border policies and has provided recommendations on securing it, which are attached to my testimony.

Under the current administration's policies, the discretionary approach to border security and immigration laws allows criminals and cartels to thrive in our very own backyards. The ongoing crisis, exacerbated by the expiration of Title 42, poses substantial threat to the security of local communities. These communities find themselves neglected and left to rely solely on local and state resources to address this crisis, without any concrete plan by the Secretary of Homeland Security to address these impacts.

I'd like to emphasize the most expeditious means by which the federal government can enhance its support for local law enforcement and first responder efforts. It is imperative for Congress to enact legislation that ensures the lasting security of our border. I urge the U.S. House to reinstate the MPP (Remain in Mexico) policy which seemed to work so well just a few years ago. It is crucial that we have a clear understanding of who is entering our country!

Thank you again for the opportunity to share my perspective and I am happy to help this committee address the critical issues it continues to address.

Attachments:
National Sheriffs' Association Letter to Speaker Johnson

National Sheriffs' Association Letter to House and Senate Appropriations

Press Release: Nation's Sheriffs Call for the Eradication of Drug Cartels, Starting with the Sinaloa and Jalisco New Generation Cartels

Press Release: Nation's Sheriffs Call for Action at the Border Due to Heightened Threat Picture

NATION'S SHERIFFS CALL FOR THE ERADICATION OF DRUG CARTELS, STARTING WITH THE SINALOA AND JALISCO NEW GENERATION CARTELS

Thursday, February 9, 2023 - (Washington, DC) – The American Sheriff Alliance met in Washington, DC, last week to discuss the continued rise in overdose deaths and violence plaguing their jurisdictions in all areas of the country. These troubling patterns can all be traced to two main drivers of illicit narcotics into the United States – the Mexican Sinaloa and the Jalisco New Generation Cartels, both Transnational Criminal Organizations (TCOs) which are headquartered south of the United States border with Mexico.

On September 11, 2001, terrorists killed 2,977 innocent people and our nation was outraged. America's response included declaring a war on terrorism and bringing justice to the victims of this unthinkable tragedy by holding terrorists and terrorist countries accountable.

Last year, on December 14, 2022, the White House issued a statement regarding the Center for Disease Control and Prevention's (CDC) release of provisional drug overdose death data for the 12-month period ending in August 2022. Over 107,000 overdose deaths were recorded in this one-year period, with most attributed to illicit synthetic drugs like fentanyl and methamphetamine, often in combination with other drugs, including cocaine and heroin. Despite the incredible number of deaths, which can be directly attributed to the trafficking of illegal narcotics into the United States by the Mexican Cartels there has been little call to action or change in foreign policy to address this alarming issue. This crisis has caused 35 more times the amount of death to American citizens in a one-year period than was inflicted upon the U.S. on September 11th by Al-Qaeda and Osama Bin Laden.

The Mexican drug cartels, as well-documented in the successful prosecution of Joaquín Archivaldo Guzmán Loera, also known as El Chapo, operate sophisticated crime operations fueled by fear, terror, intimidation, extortion, and murder. These criminal organizations are directly responsible for the increases in deaths, human trafficking, sex trafficking, and unprecedented violence occurring in cities and counties across our nation. These cartels and their operatives are operating with disastrous effects not just on our southern border, but their influence can also be felt across our northern border

and maritime borders as they seek to exploit all avenues to deliver lethal narcotics and violent criminals into our communities.

Sheriff Greg Champagne, of St. Charles Parish, Louisiana, and President of the National Sheriffs' Association (NSA) stated, "We can no longer allow these murderers to terrorize our communities. We need every American to join us in demanding our government focus on this crisis and take whatever actions are necessary to eliminate these criminal networks and operations."

"This is not a partisan issue. This is a life-and-death issue," said Sheriff Bill Brown, of Santa Barbara County, California, and Vice President of the Major County Sheriffs of America (MCSA). "Two criminal organizations, the Sinaloa and Jalisco New Generation cartels, operate in Mexico with near impunity, producing and trafficking fentanyl and other deadly drugs that are killing more than 100,000 Americans every year. America's sheriffs are calling for meaningful change in our nation's foreign policy. The federal government must put greater pressure on the Mexican government to take aggressive action to disrupt and destroy these unlawful cartels. The current situation is intolerable and cannot stand."

Sheriff Brett Schroetlin, of Grand County, Colorado, and President of the Western States Sheriffs' Association (WSSA) said, "These cartels are operating in every part of our nation. It's not an urban, suburban, or rural issue. These massive, well-financed criminal enterprises kill, enslave, and destroy families and communities. We need the people of the United States to demand, that our government commit the necessary resources to eliminate these organizations here and abroad as they did following the horrific events of 9/11.

"This is not an immigration issue; this is a public safety and public health issue. It's not just the violence and drugs, it's the sexual assaults, human trafficking, enslavement, and fear and terror that are destroying neighborhoods here in the United States," stated Sheriff Eddie Guerra, of Hidalgo County, Texas, and Chairman of the Southwestern Border Sheriffs' Coalition (SWBSC). "We are asking every person who knows someone who has died or family who has suffered at the hands of these criminal organizations, to make their voices heard with their federal, state, and local elected officials who have the power to create the necessary change."

Sheriff Eusevio Salinas, of Zavala County, Texas, and Chairman of the Texas Border Sheriffs' Coalition (TBSC) said, "Americans can save lives by calling upon the President of the United States, U.S. Senators, and representatives in Congress and demanding immediate, comprehensive action to identify and destroy these criminal operations, wherever they may exist. Until our elected officials stand up to fight this epidemic sweeping the nation, we will continue to set records related to the number of our loved ones we continue to lose each year at the hand of these violent cartels."

The American Sheriff Alliance is imploring the public to demand their elected officials use every available sanction and accountability tools at their disposal in combating the

atrocities committed against our country and its citizens by the Sinaloa and Jalisco New Generation Cartels. Without such action, these dangerous cartels will continue to destroy the very fabric of our families and communities.

The American Sheriff Alliance consists of sheriffs, leadership, and chief law enforcement officers from the National Sheriffs' Association, Major County Sheriffs of America, the Western State Sheriffs' Association, the Southwestern Border Sheriffs' Coalition, and the Texas Border Sheriff's Coalition. This alliance was formed to advocate for policy change and reform in order to keep our nation's citizens safe as well as support the men and women who protect and serve the United States of America.

FOR IMMEDIATE RELEASE
September 28, 2023

Nation's Sheriffs Call for Action at the Border Due to Heightened Threat Picture

The American Sheriff Alliance continues to call out cartel activity and lack of reinforcements at the border

San Diego, California – The American Sheriff Alliance met in San Diego this week to discuss the continued pressure and strain on resources the lack of border enforcement is having on local communities throughout the United States including the alarming statistics of encounters with individuals found to be on the Terrorist Watch List, also known as the Terrorist Screening Dataset (TSDS). Further, the diversity of the countries of origin for migrant encounters also concerning particularly with those with those who have strained diplomatic relations with the U.S. The driving forces can be traced back to the lack of border security as well as the Sinaloa Cartel run by Ismael Zambada Garcia ("*El Mayo*") and Jalisco New Generation Cartel run by Nemesio Ruben Oseguera Cervantes ("*El Mencho*").

Along the southwest border, U.S. Customs and Border Protection (CBP) TSDS encounters between ports of entry of non-U.S. citizens have continually risen over the past six years. The following are the number of TSDS encounters according to CBP: 2017 – 2 encounters, 2018 – 6 encounters, 2019 – 0 encounters, 2020 – 3 encounters, 2021 – 15 encounters, 2022 – 98 encounters, and in 2023 YTD – 151 encounters. Since 2021, this represents a 906% increase in TSDS encounters and there are still three months left in 2023.

In addition to these alarming rates of TSDS encounters, other criminal statistics continue to rise. The number of arrests of individuals with criminal convictions or those wanted by law enforcement by noncitizens has increased exponentially from 6,562 encounters in 2021, to 16,992 in 2022, and year to date in 2023 there have been 18,586 encounters which marks a 183% increase since 2021 with again three months left this year.

The statistics for TSDS encounters and those who have criminal convictions or who are wanted by law enforcement are reflective of only those who have encountered authorities. It is unknown how many concerning individuals have entered the United States who have not been accounted for. It has been reported by CBP that they have estimated a total of 600,000 got-a-ways this year, but there is no way of knowing the exact numbers. These alarming statistics are extremely concerning to the Alliance and there are major homeland security concerns with these individuals especially with the lack of information and vetting as to their intentions, criminal histories, or connections to our adversaries.

Further, the strain on local resources both for border sheriffs and law enforcement across the country who do not have the adequate staffing or funding to respond to this influx of migrants is troubling and continues to effect communities across the country who are left to deal with violent criminals, illicit narcotics, as well as the pressure felt on community services including housing and medical needs.

"When the number of people dying from drug poisonings is the equivalent to a 737 airplane crashing each day and the number of migrants that we are aware of coming across the border could fill the Caesars Superdome in New Orleans weekly, we have to sound the alarm," said Sheriff Greg Champagne of St. Charles Parish, Louisiana, and President of the National Sheriffs' Association (NSA). "If a plane crashed daily, there would be immediate action taken and yet instead of seeing numbers decrease, we continue to set records for those who are dying from illicit narcotics mostly originating from the drug cartels in Mexico."

"Communities across the United States whether or not they are located near a southern, northern, or maritime border are being affected by the lack of resources available to address the overwhelming challenges in stopping the volume violent criminals and illicit narcotics flowing into our country at the hands of the cartels," stated Major County Sheriffs of America Executive Director Megan Noland. "The implications to the nation's homeland security threat picture continues to expand as migrant flows and cartel activity continue to increase with no relief in sight. Terrorists and foreign bad actors are monitoring the current weak border policies and they will absolutely exploit these failings given the opportunity."

Sheriff Leon Wilmot of Yuma County, Arizona and a member of the Western States Sheriff's Association stated, "The pressure on law enforcement at the local level is unsustainable with the continued daily increases at the southern ports of entry. With the sustained unrelenting flow of migrants coming from all over the world and the background checks and vetting process being limited it is concerning who is being released into the interior. The cartels are actively promoting the weak border policies through social media networks, and it is clear they have been sadly, very successful in their mission."

"While we know that these pressures are affecting U.S. borders from all sides, the southern border is clearly the center of concern when we see migrants from countries across the world enter our country into the Southwest Border," said Sheriff Eddie Guerra of Hidalgo County, Texas, and President of the Southwestern Border Sheriffs' Coalition. "CBP has reported that migrant encounters at the southwest border covers 180 international countries – many who are adversaries with the United States, which should be concerning to every American citizen."

Sheriff Tom Schmerber of Maverick County, Texas, and President of the Texas Border Sheriff's Coalition noted, "While federal, state, and local law enforcement are doing everything they can to keep their local communities secure and ensure humane conditions for migrants who are truly seeking asylum, there is no doubt that the asylum system is being abused and the traditional avenues are overwhelmed to keep up requests forcing the release of these individuals without any accountability. El Mencho, El Mayo, and other troubling cartel criminals will continue to exploit these easy loopholes without action from our elected officials.

The American Sheriff Alliance encourages elected officials at every level of government to draw attention and make the proper reforms to these extreme challenges – this includes actions needed to be taken by the White House Administration as well as Congress to ensure our border is secure. With

hundreds of violent criminals entering communities around the country as well as the flow of illicit narcotics poisoning our citizens, the Alliance is demanding that all available sanctions and statutes be used to help alleviate the pressure the men and women of law enforcement are facing during this unprecedented period in our nation's history. With a potential government shutdown on the horizon where staff will deal with this crisis unpaid, the environment is ripe for the perfect storm with American's citizens suffering the consequences and we ask for the public's support is asking for the necessary reforms.

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*The **American Sheriff Alliance** consists of sheriffs, leadership, and chief law enforcement officers from the National Sheriffs' Association, Major County Sheriffs of America, the Western State Sheriffs' Association, the Southwestern Border Sheriffs' Coalition, and the Texas Border Sheriff's Coalition. This alliance was formed to advocate for policy change and reform to keep our nation's citizens safe as well as support the men and women who protect and serve the United States of America at the federal, state, and local level.*

NATIONAL SHERIFFS' ASSOCIATION

November 9, 2023

The Honorable Mike Johnson
The Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

On behalf of the 3,081 Sheriffs of this great Country, we write today to offer our hard won wisdom on issues relating to the Southern Border. With seven and a half million illegal immigrants breaching our Border since January 2021, we thought it would be helpful to the Congress to lay out our proposed guidelines for fixing our broken immigration system, especially in light of the capture of 2000 Chinese aliens at the Border in the last four weeks. We still don't know who they are and where they went!

To wit:

1. Build the remaining wall to act as a physical barrier.

2. Follow the law that allows for immediate expulsion of anyone illegally entering our country.

3. Insist on judicial oversight and raise the threshold of "credible fear" that most migrants use to gain asylum.

4. End the authority to issue parole.

5. Reimplement the "remain in Mexico" (MPP) strategy that worked so efficiently pre 2021.

6. Enforce the law that deems migrants ineligible for asylum if they touched a safe third country.

7. Eliminate the piece of paper CBP gives migrants telling them to show up for an asylum hearing in the future. Many migrants can and do use this to work illegally in the U.S.

8. Collection protocol for DNA and disease carried by migrants.

We could go on for many more pages but the crux is, there are laws on the books and barriers laying on the ground that if followed and used would make our Border more secure. Your commitment to addressing these concerns is essential for the welfare and safety of our citizens and the maintenance of the rule of law.

Very respectfully,

Greg Champagne
Sheriff, St. Charles Parish, LA
President, National Sheriffs' Association

1450 Duke St. • Alexandria, VA 22314 • 703.836.7827 phone • 703.683.6541 fax • www.sheriffs.org • nsamail@sheriffs.org

NATIONAL SHERIFFS' ASSOCIATION

December 01, 2023

Senator Patty Murray
Chairwoman
Senate Committee on Appropriations
S-128, The Capitol
Washington, DC 20510

The Honorable Kay Granger
Chairwoman
House Committee on Appropriations
H-307 The Capitol
Washington, DC 20515

Senator Susan Collins
Vice Chairwoman
Senate Committee on Appropriations
S-128, The Capitol
Washington, DC 20510

The Honorable Rosa De Lauro
Ranking Member
House Committee on Appropriations
H-307 The Capitol
Washington, DC 20515

Dear Chairs Murray and Granger, Vice Chair Collins, and Ranking Member De Lauro,

Recently leaders of the National Sheriffs' Association met virtually with the White House Senior Advisor to the President and former Secretary of Labor Tom Perez. We were asked to meet and discuss the ongoing crisis along the Southwest border of the United States, and the Administration's proposed response.

During the discussion Secretary Perez graciously listened to passionate pleas from several border Sheriffs, and several interior Sheriffs, about the need for the Administration to urgently and radically change its policies of minimizing requirements of anyone seeking to legally or illegally enter the US. We all underscored the need for increased "legal" immigration to our Country, the key being the need to know who is coming, why, and how they can be contributing and beneficial citizens.

At the conclusion of the meeting, Secretary Perez asked the National Sheriffs' Association to support the Administration's emergency request for $14 billion to expand its current border activities, policies and practices. We declined and advised the Secretary of our strongest objections to any further law or appropriations (and language) that would allow funding to further diminish the federal, state, and local law enforcement ability to uphold the rule-of-law. Secretary Perez also stated that the labor shortages facing employers was a sound source for the Administration's efforts to bring more unskilled and under-educated people to the US. We categorically reject any policy that minimizes skills and education for the sole benefit of employers unable to secure labor. That is a false premise and is a dangerous policy of downplaying safety and security to our communities.

Sadly, the President's policies have circumvented every effort to discourage, dissuade and block illegal immigration to the United States. In fact, to paraphrase Secretary Perez we are now witness and victims of the largest global migration crisis ever.

Nevertheless, we made clear, and reiterate here, that we remain opposed to any appropriation that permits the Administration to do the following:

1. Circumvents intentions and authorities of Border Patrol personnel to protect our border from illegal incursions either at or in between our points of entry;
2. Provides funding for administrative personnel to expedite the application process of asylum seekers without their remaining in a third-party nation awaiting the required background checks and adjudication of their applications;

3. Grants funding to any agency, personnel, or officers of the USG the authority to unilaterally use administrative procedures to temporarily change the legal status of anyone seeking to come to the Country without a thorough vetting of their background and history;
4. Circumvents any prohibition for the use of funds by any USG agency or Office to fund non-government organizations to train, advocate, use of deception that promotes and helps secure the illegal entry to our Country, this would include any USG or NGO or contractor of the USG whose staff or subcontractors advise illegal immigrants on means, methods, actions to avoid or deceive documentation to enter into our legal immigration system;
5. Avoids funding and reimbursement to every local detention, jail, or holding facility at 100% of the cost to hold anyone arrested or being detained at the request of the USG on civil or criminal immigration violations, or who was granted legal status and subsequently arrested and detained in a state or local detention or jail facility for criminal charges;
6. Avoids funding prohibitions of any federal agency or office, officers and employees or contractors of the USG from planning, considering, designing or seeking to have conceived any grants, loans or direct Treasury funds for transfer to any foreign government, public entity, or private NGOs on behalf of the USG that have failed to meet four standards or have circumvented the following actions to have occurred:
    a. US fund receiving entity has met every metric to advocate for, and repeatedly stated, promoted and took policy steps to cause a cessation of illegal immigrants enter into the US; and lowers arrests for illegal entry to the US;
    b. Eliminated any incentives, travel, transport, use of funds, or other means to expedite transit of persons from any country seeking to illegally enter the United States (an exception is the DOD Special Immigrant Visa program designed for those supporting members of the military in their explicit combat operations);
    c. The amount of illegal substances entering the US has drops by 33% annually; human smuggling has drops by 50% from the country of origin; and,
    d. The Secretary of Homeland Security shall be required to verify all progress on these measures on a quarterly basis and will be prohibited for one year from the last report from hiring personnel outside of the ICE, CBP, CISA, and DHS INA or key security elements of the protecting the homeland and the federal government assets to work for the Department of Homeland Security. This shall include all schedule A or C personnel not hired by those listed components and others.
7. Allows federal funds to be directed to off-set 100% of any costs of local law enforcement entities, along the 33 Southern border counties or within their jurisdiction. These funds shall be eligible only via direct funding to the applying agencies and shall be available upon the chief law enforcement officers' of the jurisdiction certification of need and use.
8. Allows funds expended from the Treasury via appropriated emergency funds for any USG agencies or Offices to perform work in contravention of the law, equivalent to the Boland Amendment for funding foreign operations.

In lieu of supporting the Administration's request, we propose redirecting the $14 billion towards critical domestic law enforcement areas. Specifically, funds could be allocated to technology infrastructure for Sheriffs, including fully funding Next Generation 911, implementing a national Jail Database Program, and transferring the National Institute of Corrections to the Office of Justice Programs within the Department of Justice. These projects must commence within the next 12 months.

Our primary duty as public servants is to safeguard the citizens of this nation, regardless of their origin or immigration status. These issues are pivotal to the safety and security of our communities. We urge prompt consideration and support for these critical initiatives to ensure a safer, more secure America.

Sincerely,

Jonathan Thompson
Executive Director, CEO
National Sheriffs' Association

MONTGOMERY COUNTY COMMISSIONERS COURT RESOLUTION SUPPORTING MEASURES TO SECURE THE BORDER AND REPEL THE INVASION AT THE BORDER IN ORDER TO PROTECT OUR COMMUNITIES

STATE OF TEXAS §
COUNTY OF MONTGOMERY§

WHEREAS, securing the international border is the federal government's responsibility, and through President Biden's outright refusal to enforce immigration laws enacted by Congress, the federal government has been derelict in their duties to secure our Southern Border with Mexico; and

WHEREAS, since January 2021, over 8 million illegal border crossings have occurred in the U.S., totaling more than the populations of 38 individual U.S. States; and

WHEREAS, the Biden Border crisis hit a new record between August and December of 2023, with over 1.2 million illegals encountered at the Southern Border with Mexico, the vast majority of which have crossed into Texas; and

WHEREAS, at least 50 subjects on the terrorist watchlist have been arrested while attempting to cross the border illegally since January 2021, and an unknown number have crossed while evading detection and capture, demonstrating that an insecure border is a pathway for terrorist to enter the State of Texas and United States; and

WHEREAS, President Biden's reckless refusal to secure the border has provided material support and allowed the cartels to smuggle dangerous people, drugs, and weapons into Texas; and

WHEREAS, to date more than 431 million lethal doses of fentanyl have been seized by Texas' efforts to secure our Southern Border with Mexico, enough to kill the entire population of the United States; and

WHEREAS, Article IV, § 4 of the U.S. Constitution known as the "Guarantee Clause" states, *"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion";* and

WHEREAS, Article IV, § 7 of the Texas Constitution provides the Governor of Texas legal authority as *"Commander-in-Chief of the military forces of the state"* to *"call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions."*.

NOW THEREFORE, be it resolved by the Commissioners Court of Montgomery County that:

1. A clear and present danger exist to Montgomery County and to the State of Texas due to the invasion along our Southern Border with Mexico caused by the failures of the Biden Administration to suppress said invasion and by the willful and wanton lack of enforcement of the laws duly enacted by the Congress of the United States.

2. Montgomery County Commissioners Court stands in full support of the actions undertaken by Governor Abbott, through Operation Lone Star, to defend Texas' sovereignty and defend against the invasion at our Southern Border with Mexico.

3. Montgomery County Commissioners Court fully supports Governor Abbott's efforts to relocate illegal migrants by any means necessary to states and cities throughout the U.S. who have affirmed or proclaimed themselves a "sanctuary".

4. Montgomery County Commissioners Court implores President Biden to immediately begin enforcing federal immigration laws, to stop migrants illegally crossing into Texas and the U.S., to immediately stop cartels from human trafficking, importing illegal drugs, weapons and their known support and harboring of terrorist who are entering Texas and the U.S. through a porous border.

5. Montgomery County Commissioners Court requests our Texas Congressional Delegation to immediately undertake any necessary legislative action that will compel President Biden and all Federal Agencies to secure our Southern Border with Mexico in order to protect the Citizens of Montgomery County and all Citizens of Texas and the United States.

Passed This 23rd day of January 2024.

Mark J. Keough
County Judge

Robert Walker
County Commissioner, Precinct 1

Charlie Riley
County Commissioner, Precinct 2

James Noack
County Commissioner, Precinct 3

Matt Gray
County Commissioner, Precinct 4

As Adopted by the Republican National Committee

REPUBLICAN
NATIONAL COMMITTEE

RESOLUTION IN SUPPORT OF AN EMERGENCY DECLARATION FOR THE SOUTHERN BORDER

WHEREAS, The Republican National Committee (RNC) is committed to protecting the United States' borders;

WHEREAS, Article 4 Section 4 of the U.S. Constitution guarantees to every State in this Union protection against invasion and/or domestic violence;

WHEREAS, On February 8, 2023, the U.S. Customs and Border Protection's aerostat/balloon monitoring program to secure our overwhelmed Southern Border was drastically cut allegedly based on a lack of funding;

WHEREAS, On February 15, 2023, Sheriff Urbino "Benny" Martinez testified at the first Congressional hearing on the Texas border that state and local police have observed nearly 2,000 Mexican Cartel drones flying overhead in three Texas counties over the past month;

WHEREAS, The Southern Border is now a gateway for Mexican Cartel activities including human trafficking and the smuggling of illegal drugs including fentanyl;

WHEREAS, It is of the utmost importance that our own aerostat/balloon/drone technological capabilities exceed those of countries and adversaries hostile to the United States; and

WHEREAS, If United States federal officials continue to shirk their constitutional duty to protect our borders, our country cannot defend our national sovereignty; therefore, be it

RESOLVED, That the Republican National Committee affirms that effective measures shall be taken to ensure accountability of taxpayer monies transferred to protect the borders of other countries when United States borders are unprotected;

RESOLVED, That the Republican National Committee affirms that protecting the United States border is the priority;

RESOLVED, That the Republican National Committee also affirms that aerostat and drone technology serve as an integral part of protecting our borders;

RESOLVED, That the Republican National Committee urges Congress to take measures to reverse the reduction of aerostats being used to monitor the overwhelmed Southern Border;

RESOLVED, That the Republican National Committee urges Congress to take measures to provide military-grade drones and training to law enforcement working to secure the southern border as appropriate;

RESOLVED, That the Republican National Committee declares that Article 4 Section 4 of the U.S. Constitution also serves to protect our citizens against invasion by cartels engaged in human and drug trafficking and illegal immigration;

RESOLVED, That the Republican National Committee supports development of systems to detect and defeat balloons that may bear weapon systems such as EMP devices and spy hardware before they enter the United States Air Defense Identification Zone (ADIZ); and

RESOLVED, That the Republican National Committee urges Congress to declare a National Emergency and take all measures to protect all United States borders beginning with the Southern Border.

18695

DECLARATION OF LOCAL STATE OF DISASTER

WHEREAS, the health, safety, and welfare of Lavaca County residents is under an imminent threat of disaster from the unprecedented levels of illegal immigration, human trafficking, and drug smuggling coming across the U.S. border from Mexico.

WHEREAS, since January 2021, more than 4.4 million illegal aliens have been apprehended after unlawfully entering the United States.[1] More than 800,000 illegal aliens have avoided apprehension while unlawfully entering the United States and remain unaccounted for within our nation.[2] So far this year, CBP has identified more than 63 known terrorists who have unlawfully entered the United States through our unsecured border with Mexico.[3] The unprecedented amount of human trafficking, combined with the smuggling of fentanyl and other opioids infiltrating our border with Mexico has killed over 80,816 American citizens.[4] The sophisticated human smuggling and drug trafficking organizations that facilitate these criminal acts are spearheaded by violent international drug cartels who have operational control over our unsecured U.S./Mexico border.

WHEREAS, the ongoing immigration crisis on the Texas border is not acceptable, and has resulted in a security threat and humanitarian disaster with overwhelming consequences to the residents of Lavaca County and Texans, alike.

WHEREAS, the County Judge of Lavaca County, Texas, has determined that extraordinary measures must be taken to ensure the protection of the health, safety, and welfare of county residents.

NOW, THEREFORE, BE IT PROCLAIMED BY THE COUNTY JUDGE OF LAVACA COUNTY, TEXAS:

That the aforementioned recitation of facts is hereby adopted as findings of fact related to this declaration; and

1. That as a matter of law, the aforementioned facts constitute - among other things - an ***invasion*** of Lavaca County, Texas, as the term "invasion" is used in Article IV, Section 4 of the U.S. Constitution and in Article 4, Section 7 of the Texas Constitution; and

2. That pursuant to Section 433.00S(a) of the Texas Government Code *(Calling of State Military Forces)* and Article 4, Section 7 of the Texas Constitution *(Governor as commander-in-chief of Military Forces),* this declaration does hereby request that the Governor of Texas, as Commander-in-Chief of the military forces of the State, declare

the existence of an ***invasion*** on its border with Mexico and take necessary actions to preserve and protect the sovereignty and territorial integrity of Texas; and

3. That this declaration hereby requests the Governor of Texas to act under the constitutional authority granted unto him under Article 4, Section 7 of the Texas Constitution and Article 1, Section 10, Clause 3 of the U.S. Constitution and immediately prevent and/or remove all persons ***invading*** the sovereignty of Texas and that of the United States; and

4. That a local state of disaster is hereby declared for Lavaca County, Texas, pursuant to Section 418.108(a) of the Texas Government Code; and

5. That pursuant to Section 418. l08(b) of the Texas Government Code, the state of disaster shall continue for a period of not more than seven days from the date of this declaration unless continued by the Commissioners Court of Lavaca County, Texas; and

6. That pursuant to Section 418.108(c) of the Texas Government Code, this declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the County Clerk of Lavaca County, Texas; and

7. That this declaration hereby authorizes the use of all lawfully available resources and authority granted under both the Constitution of Texas and the Constitution of the United States; and

8. That this declaration shall take effect immediately from and after its issuance and, upon approval by the Lavaca County Commissioners' Court, shall continue in effect until terminated by the County Judge. Pursuant to this declaration, additional directives may be issued by the County Judge at any time deemed necessary and/or relevant.

DECLARED this August 2022.

Judge Myers, County Judge
Lavaca County, Texas

[1] https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics
[2] https://saraacarter.com/carter-border-exclusive-over-800000-gotaways-have-just-disappeared-into-the-fabric-of-america/
[3] https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics
[4] https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm

GOVERNOR GREG ABBOTT

January 24, 2024

The federal government has broken the compact between the United States and the States. The Executive Branch of the United States has a constitutional duty to enforce federal laws protecting States, including immigration laws on the books right now. President Biden has refused to enforce those laws and has even violated them. The result is that he has smashed records for illegal immigration.

Despite having been put on notice in a series of letters—one of which I delivered to him by hand—President Biden has ignored Texas's demand that he perform his constitutional duties.

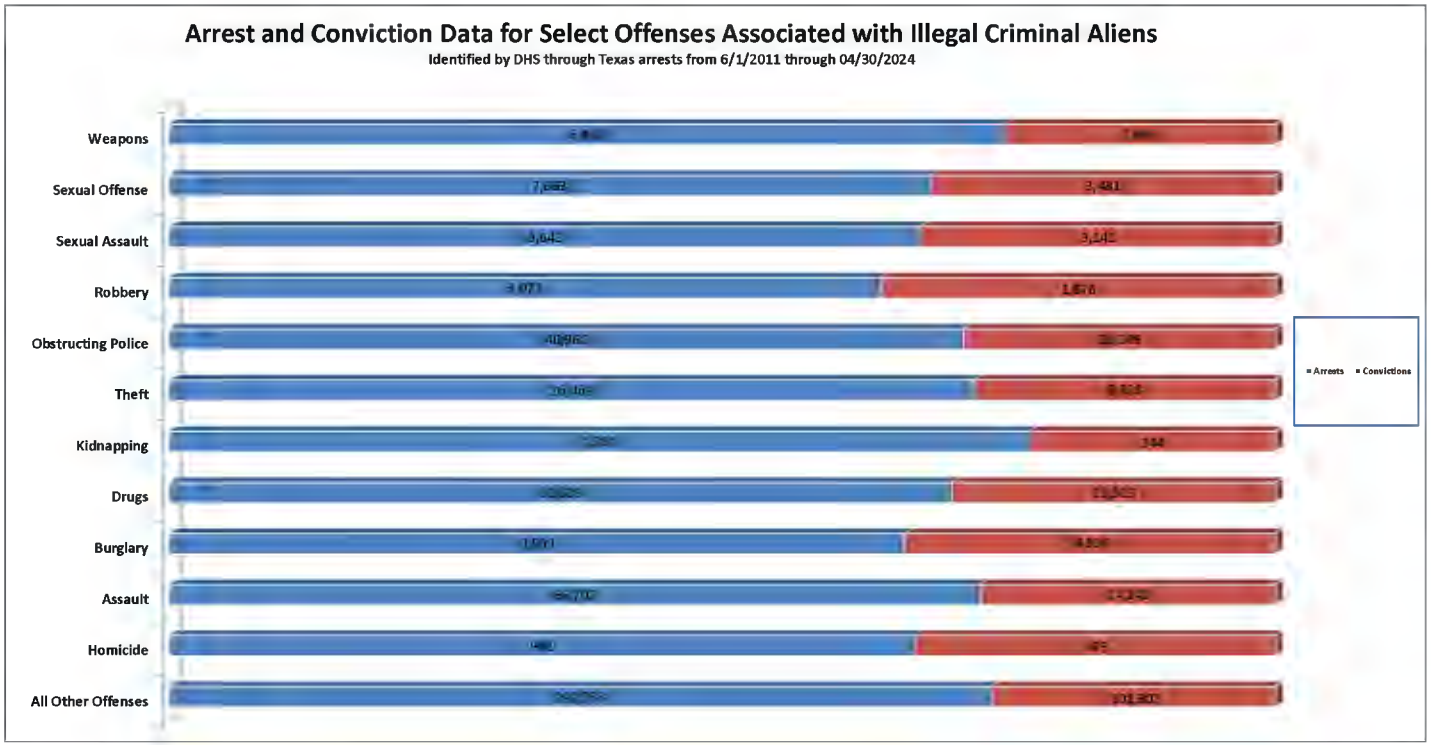
- President Biden has violated his oath to faithfully execute immigration laws enacted by Congress. Instead of prosecuting immigrants for the federal crime of illegal entry, President Biden has sent his lawyers into federal courts to sue Texas for taking action to secure the border.
- President Biden has instructed his agencies to ignore federal statutes that mandate the detention of illegal immigrants. The effect is to illegally allow their *en masse* parole into the United States.
- By wasting taxpayer dollars to tear open Texas's border security infrastructure, President Biden has enticed illegal immigrants away from the 28 legal entry points along this State's southern border—bridges where nobody drowns—and into the dangerous waters of the Rio Grande.

Under President Biden's lawless border policies, more than 6 million illegal immigrants have crossed our southern border in just 3 years. That is more than the population of 33 different States in this country. This illegal refusal to protect the States has inflicted unprecedented harm on the People all across the United States.

James Madison, Alexander Hamilton, and the other visionaries who wrote the U.S. Constitution foresaw that States should not be left to the mercy of a lawless president who does nothing to stop external threats like cartels smuggling millions of illegal immigrants across the border. That is why the Framers included both Article IV, § 4, which promises that the federal government "shall protect each [State] against invasion," and Article I, § 10, Clause 3, which acknowledges "the States' sovereign interest in protecting their borders." *Arizona v. United States*, 567 U.S. 387, 419 (2012) (Scalia, J., dissenting).

The failure of the Biden Administration to fulfill the duties imposed by Article IV, § 4 has triggered Article I, § 10, Clause 3, which reserves to this State the right of self-defense. For these reasons, I have already declared an invasion under Article I, § 10, Clause 3 to invoke Texas's constitutional authority to defend and protect itself. That authority is the supreme law of the land and supersedes any federal statutes to the contrary. The Texas National Guard, the Texas Department of Public Safety, and other Texas personnel are acting on that authority, as well as state law, to secure the Texas border.

Greg Abbott
Governor of Texas


Arrest and Conviction Data for Select Offenses Associated with Illegal Criminal Aliens
Identified by DHS through Texas arrests from 6/1/2011 through 04/30/2024
Weapons
Sexual Offense
Sexual Assault
Robbery
Obstructing Police
Theft
Kidnapping
Drugs
Burglary
Assault
Homicide
All Other Offenses
Arrests
Convictions


Texas Border Crime and Other
Criminal Activity Report

Introduction

Texas Government Code § 411.055 requires DPS to prepare and submit the *Annual Report on Border Crime and Other Criminal Activity* to the Texas Legislature not later than May 30th of each year.

This report is informed by data submitted by local law enforcement agencies in Texas for offenses and arrests reported to DPS related to activity during the period of January 1, 2022 to December 31, 2022. The report utilizes Uniform Crime Reporting (UCR) data to provide border crime statistical data which occurred in Texas counties contiguous to the Texas / Mexico border. Data relating to border crime arrests is sourced from the Computerized Criminal History (CCH) system. This data is derived from two different sources which collect different data types (one based on offense occurrence and the other based on arrest events), this data is presented separately. While there may be some overlap between the data sources, they cannot be reliably comingled as there is no information to tie a specific crime incident report to a specific arrest event.

Section 772.0071(a)(1) of the Texas Government Code defines "Border crime" as "(a)ny crime involving transnational criminal activity that undermines public safety or security, including an offense:

(A) during the prosecution of which an affirmative finding may be requested under Article 42A.054(c) or (d), Code of Criminal Procedure;
(B) under Chapter 19, 20, 20A, 21, 22, 46, 47, or 71, Penal Code;
(C) under Title 7 or 8, Penal Code;
(D) under Chapter 481, Health and Safety Code;
(E) committed by a person who is not a citizen or national of the United States and is not lawfully present in the United States; or
(F) that is coordinated with or related to activities or crimes that occur or are committed in the United Mexican States."

Border crime statistics use Incident Based Reporting data from local law enforcement agencies contiguous to the Texas / Mexico border. Further information about Incident Based Reporting activity is available on the Texas UCR Program webpage.

Border arrests refers to criminal offenses committed by persons who are not lawfully present in the United States. Please note: the arrests in this report do not include all arrests committed by persons not lawfully present in the United States. Lawful presence is determined by the Department of Homeland Security (DHS) when the arrestees' fingerprints are matched to fingerprints in the DHS database. If an unlawfully present individual is arrested and their fingerprints were not already enrolled in the DHS database at the time of their Texas arrest, DHS would be unable to biometrically verify their immigration status and therefore, their arrests are not included in these counts.

Additional information related to the data collections used to inform the border arrest information in this report can be found on the Texas Criminal Illegal Alien Data webpage.

The information contained in this Report is accurate as of March 30, 2023, for incidents occurring in calendar year 2022. The underlying data changes continuously as submissions are created and updated from law enforcement agencies across the State each day. Because of this, it may not be possible to replicate the figures included within this report when using the same search criteria. Slight variations in results obtained using identical queries are expected and normal for the systems used in compiling this information due to the dynamic nature of the reporting process.

Executive Summary

Texas is fortunate to have a high number of law enforcement agencies that contribute to the UCR program. As of March 30, 2023, there were 1,070 Texas agencies contributing data to the UCR program. Without their participation, reports such as this would not be meaningful.

Border crime impacts all areas of Texas. As the data contained in these pages demonstrates, criminal illegal aliens account for a significant number of serious offenses in Texas. The report does not imply that unlawfully present individuals commit crime at a higher rate than citizens, it simply provides a count of the Texas arrests of individuals who are not legally present in the United States. These criminals harm Texans and affect our safety and security.

DPS publishes a Crime in Texas (CIT) report every year using data collected through the state's UCR program. The CIT provides statistics and information for selected offenses across Texas, and each yearly report beginning in 2011 is available on the CIT webpage.

Border Crime Arrest Data

The data in the table below depicts statewide border crime arrests related to individuals not lawfully present in the United States for the period of January 1, 2022, through December 31, 2022.

Annual Arrest Counts By County

Top 20 Counties	Totals by County
HARRIS	7,308
DALLAS	5,165
HIDALGO*	2,656
TARRANT	2,633
EL PASO*	2,142
TRAVIS	2,063
BEXAR	1,392
COLLIN	1,170
CAMERON*	1,168
MONTGOMERY	1,077
DENTON	1,030
WEBB*	875
WILLIAMSON	538
FORT BEND	479
BRAZORIA	392
KINNEY*	376
GALVESTON	356
BASTROP	350
HAYS	336
BRAZOS	270
MIDLAND	244
Total of Top 20 Counties	32,020
All Other Counties	8,440
Statewide Totals	40,460

Those with an asterisk (*) are border counties.

The table below reflects the total border crime arrests reported in border and non-border counties for counties with the 20 highest numbers of reported arrests. The counties listed below represent more than 95% of the reported activity.

Cumulative Statewide Annual Arrests Caunt By Month

Month	Total
January	2,406
February	2,351
March	2,926
April	3,020
May	3,256
June	3,338
July	3,412
August	3,413
September	3,246
October	3,254
November	3,077
December	3,124
Total	**36,823**

The above arrest count by month may not match the total offense count by year due to monthly reports being pulled following each month and not accounting for any additions that occur afterwards.

The selected offenses referenced in the following table correspond with the requirements outlined for this report in the Texas Government Code Sections 411.055 and 772.0071.

Arrest Offense Categories

Offense Category	Statewide Totals
Arson	39
Assault	6,818
Bribery	5
Burglary	642
Commercial Sex	362
Crimes Against Person	32
Damage to Property	422
Dangerous Drugs	4,070
Escape	28
Extortion	0
Family Offense	439
Federal Offense	1,759
Forgery	134
Fraud	695
Health Safety	201
Homicide	75
Invade Privacy	727
Kidnapping	161
Larceny	2,156
Obscene Material	64
Obstruct Contempt Perjury	163
Obstruct Police	2,998
Property Crimes	12
Public Order Crimes	1,269
Public Peace	611
Robbery	268
Sex Assault	616
Sex Offense	363
Smuggling	24
Terroristic Threat	337
Traffic Offense DWI	10,744
Trafficking Smuggling	1,483
Vagrancy	89
Vehicle Theft	354
Weapon Offense	782
Total of Selected Offenses	**38,942**
All other offenses	1,518
Statewide Total Offenses	**40.460**

*Used yearly total report for this breakdown

Border Crime Statistical Data

This section reflects border crime statistical data submitted to the Texas UCR program by local law enforcement agencies in the counties along the Texas and Mexico border. 2021 was the first year the UCR program is no longer accepting reports in two formats—the traditional Summary reporting methodology was sunset at the end of 2020 and now all participating agencies are submitting the more data rich National Incident Reporting System (NIBRS) format.

While 411.055 of the Texas Government Code directs the DPS to utilize NIBRS reporting for the Border Report, previous Border Reports were a mix of Summary and NIBRS data, presented in a summarized reporting method. As of 2022, all Texas agencies participating in UCR program reported in the NIBRS format, but some summarized reports are still used to show an overall picture of crime.

Additionally, statewide UCR data totals are depicted on page 17.

UCR data is continually updated so current data may slightly differ from what is contained in this report. Agency totals by month are available on the DPS website.

The following information is an overview of the Index Crimes by Agency for 2022. Then, a Statewide Index Crime Offense Count by month.

Some caveats include:

- Most in Population (MIP) includes agencies with 100,000 or more jurisdictional population. These agencies are identified with an asterisk *.
- Rape includes NIBRS offenses of Rape, Sexual Assault with an Object, and Sodomy.
- Assault includes NIBRS offense of Aggravated Assault and Simple Assault.
- Justifiable Homicide is not included.

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
ALPINE PD	BREWSTER	5,757	0	0	1	0	7	3	7	0	2	0	0	20	12
BREWSTER CO SO	BREWSTER	3,634	0	0	0	0	0	0	0	0	0	0	0	0	12
SUL ROSS STATE UNIV PD	BREWSTER	0	0	0	0	0	0	0	0	0	0	0	0	0	12
BROWNSVILLE ISD PD	CAMERON	0	0	0	0	0	17	3	84	0	0	0	0	104	12
BROWNSVILLE PD (MIP)*	CAMERON	188,906	4	2	71	127	615	398	2,880	189	17	1	0	4,304	12
CAMERON CO SO (MIP)*	CAMERON	96,998	4	1	51	17	210	156	461	96	7	0	0	1,003	12
COMBES PD	CAMERON	3,071	0	2	0	6	7	22	9	0	0	0	0	46	12
HARLINGEN PD	CAMERON	72,047	3	0	11	52	167	260	1,646	128	11	1	0	2,279	12
LA FERIA PD	CAMERON	6,791	0	0	8	2	24	23	135	7	0	0	0	199	12
LAGUNA VISTA PD	CAMERON	3,673	0	0	1	0	0	5	10	0	0	0	0	16	12
LOS FRESNOS PD	CAMERON	8,164	0	0	2	0	33	4	106	4	0	0	0	149	12

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
PORT ISABEL PD	CAMERON	5,165	0	0	4	0	24	13	88	9	0	0	0	138	12
PORT OF BROWNSVILLE PD	CAMERON	0	0	0	0	0	0	4	0	0	0	0	0	4	12
PRIMERA PD	CAMERON	5,319	0	0	0	0	4	1	6	1	0	0	0	12	12
RANCHO VIEJO PD	CAMERON	2,867	0	0	0	0	0	4	14	1	0	0	0	19	12
RIO HONDO PD	CAMERON	2,012	0	0	1	1	6	4	26	3	0	0	0	41	12
SAN BENITO PD	CAMERON	24,712	0	0	0	10	118	65	327	34	2	1	0	557	12
SANTA ROSA ISD PD	CAMERON	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SOUTH PADRE ISLAND PD	CAMERON	2,048	0	0	12	5	15	12	257	19	0	0	0	320	12
TSTC: HARLINGEN PD	CAMERON	0	0	0	0	0	0	0	1	0	0	0	0	1	12

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
ANTHONY PD	EL PASO	3,662	0	0	2	3	4	0	30	10	0	0	0	49	12
CLINT PD	EL PASO	925	0	0	0	0	0	0	0	0	0	0	0	0	12
EL PASO CO SO (MIP)*	EL PASO	120,450	10	3	42	31	276	135	642	192	12	0	0	1,343	12
EL PASO COMM COLLEGE PD	EL PASO	0	0	0	0	0	0	0	9	0	0	0	0	9	12
EL PASO ISD PD	EL PASO	0	0	4	2	11	14	63	1	1	0	0	0	96	12
EL PASO PD (MIP)*	EL PASO	678,232	22	5	288	267	1,541	969	6,954	1,408	61	1	0	11,516	12
HORIZON CITY PD	EL PASO	23,726	0	0	4	1	28	24	142	32	0	0	0	231	12
SAN ELIZARIO MARSHAL'S OFFICE	EL PASO	10,080	0	0	0	1	3	6	19	5	0	0	0	34	12
SOCORRO ISD PD	EL PASO	0	0	0	5	1	18	2	16	2	1	0	0	45	12

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
SOCORRO PD	EL PASO	37,952	3	0	22	9	51	42	182	57	1	0	0	367	12
UNIV OF TX: EL PASO PD	EL PASO	0	0	0	0	0	6	3	91	3	1	0	0	104	12
ALAMO PD	HIDALGO	20,383	1	0	20	14	81	153	637	48	1	0	0	955	12
ALTON PD	HIDALGO	19,391	0	0	1	6	88	32	157	21	1	0	0	306	12
DONNA PD	HIDALGO	16,842	2	1	10	6	174	54	346	46	4	2	0	645	12
EDINBURG CISD PD	HIDALGO	0	0	0	2	0	0	0	9	0	0	0	0	11	12
EDINBURG PD (MIP)*	HIDALGO	104,987	3	0	68	59	223	229	2008	86	6	0	0	2,682	12
ELSA PD	HIDALGO	5,683	1	0	2	2	24	45	198	8	0	0	0	280	12
HIDALGO CO CONSTABLE PCT: 1	HIDALGO	0	0	0	0	0	1	0	0	0	0	0	0	0	12

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
HIDALGO CO SO (MIP)*	HIDALGO	262,967	14	0	100	100	353	559	1,887	397	14	0	0	3,424	12
HIDALGO PD	HIDALGO	14,468	1	4	4	3	2	16	163	20	1	0	0	214	12
LA JOYA PD	HIDALGO	4,666	0	0	5	0	17	8	15	0	0	0	0	45	12
LA VILLA PD	HIDALGO	2,782	0	0	2	0	4	4	20	1	0	0	0	31	0
MCALLEN ISD PD	HIDALGO	0	0	0	0	0	4	0	43	1	0	0	0	48	12
MCALLEN PD (MIP)*	HIDALGO	145,510	5	6	58	42	180	159	2,618	63	13	0	0	3,144	12
MERCEDES PD	HIDALGO	16,365	0	0	11	7	111	46	388	40	4	0	0	607	12
MISSION PD	HIDALGO	86,577	1	0	74	30	189	160	1,174	117	6	3	0	1,754	12
PALMHURST PD	HIDALGO	2,600	0	0	1	1	4	4	172	1	0	0	0	183	12

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
PALMVIEW PD	HIDALGO	15,919	0	1	5	7	58	70	144	13	0	0	0	298	12
PENITAS PD	HIDALGO	6,348	0	0	2	1	3	5	25	2	0	0	0	38	12
PHARR PD	HIDALGO	79,558	0	3	55	27	126	163	934	111	0	0	0	1,419	12
SAN JUAN PD	HIDALGO	35,806	0	0	11	14	71	79	560	52	2	0	0	789	12
SULLIVAN CITY PD	HIDALGO	3,896	0	0	0	1	10	12	26	2	0	0	0	51	12
UNIV OF TX: RIO GRANDE VALLEY PD	HIDALGO	0	0	0	2	0	1	2	55	1	0	0	0	61	12
WESLACO PD	HIDALGO	41,478	1	1	25	26	95	126	1,088	33	0	0	0	1,395	12
HUDSPETH CO SO	HUDSPETH	3,401	0	0	0	0	0	1	0	1	0	0	0	2	12
JEFF DAVIS CO SO	JEFF DAVIS	1,932	0	0	0	0	1	1	2	2	0	0	0	6	12

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
EAGLE PASS PD	MAVERICK	28,811	0	0	1	10	51	159	513	82	2	0	0	818	12
MAVERICK CO SO	MAVERICK	29,808	0	0	15	6	69	175	253	53	1	0	0	572	12
MARFA PD	PRESIDIO	1,749	0	0	0	0	2	0	3	1	0	0	0	6	12
PRESIDIO CO SO	PRESIDIO	1,131	0	0	0	0	0	1	0	0	0	0	0	1	12
LA GRULLA PD	STARR	1,208	0	0	0	2	2	1	4	3	1	0	0	13	12
RIO GRANDE CITY ISD PD	STARR	0	0	0	0	0	0	0	6	0	0	0	0	6	11
RIO GRANDE CITY PD	STARR	15,705	1	0	0	2	20	71	179	22	1	0	0	296	12
ROMA ISD PD	STARR	0	0	0	0	0	0	0	1	0	0	0	0	1	12
ROMA PD	STARR	11,547	0	0	2	2	35	11	65	9	0	0	0	124	12

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
STARR CO SO	STARR	38,202	0	0	8	3	33	50	55	28	2	0	0	179	12
TERRELL CO SO	TERRELL	709	0	0	0	0	0	0	0	0	0	0	0	0	12
DEL RIO PD	VAL VERDE	34,495	1	1	16	13	45	147	310	31	7	0	0	571	12
VAL VERDE CO SO	VAL VERDE	1,336	1	0	12	11	34	44	82	8	3	0	0	195	12
LAREDO ISD PD	WEBB	0	0	0	0	0	6	0	3	0	1	0	0	10	12
LAREDO PD (MIP)*	WEBB	256,973	12	1	67	130	602	403	2,610	277	35	0	26	4,163	12
TX A&M UNIV: INTERNATIONAL PD	WEBB	0	0	0	1	0	0	0	14	0	0	0	0	15	9
UNITED ISD PD	WEBB	0	0	0	0	0	0	0	0	0	0	0	0	0	12
WEBB CO SO	WEBB	8,945	0	1	9	3	31	26	80	28	2	2	66	248	12

AGENCY Name	County	Population	Murder and Nonnegligent Homicide	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
ZAPATA CO SO	ZAPATA	14,016	0	0	0	0	5	12	20	0	0	0	0	37	12

Statewide Offense Totals by Month

Month	Murder and Nonnegligent Manslaughter	Negligent Manslaughter	Rape	Robbery	Assault	Burglary	Larceny, Theft	Motor Vehicle Theft	Arson	Human Trafficking, Commercial Sex Acts	Human Trafficking, Involuntary Servitude	Total
January	11	2	98	78	2,242	468	2,539	303	30	2	9	5,782
February	8	2	88	70	2,274	459	2,311	291	21	0	2	5,526
March	9	1	114	94	2,676	426	2,635	328	27	0	11	6,321
April	5	3	100	98	2,838	432	2,610	320	18	1	5	6,430
May	6	6	110	77	3,116	443	2,752	343	22	0	25	6,900
June	6	2	103	96	2,606	449	2,621	354	18	0	12	6,267
July	10	5	101	110	2,837	487	2,600	321	15	3	6	6,495
August	5	4	87	89	2,713	439	2,761	326	13	1	2	6,440
September	10	2	85	105	2,848	454	2,711	351	15	1	4	6,586
October	10	1	84	83	2,667	431	2,857	319	21	2	25	6,500
November	2	2	79	69	2,437	361	2,531	308	15	1	1	5,806
December	8	0	83	89	2,615	408	2,735	364	9	0	1	6,312
Total	90	30	1,132	1,058	31,869	5,257	31,663	3,928	224	11	103	75,365

Detailed Border County Crime Statistics

The information on the following pages provides detailed totals of offenses for each border region law enforcement agency, grouped by county that reports uniform crime data to DPS. Data collected for 2022 incidents is NIBRS data. This is consistent with how the annual *Crime In Texas* report is generated.

For 2022, there is no UCR data included for Kinney and Terrell counties. Agencies within these counties did not submit any UCR or NIBRS data during the 2022 reporting year.

UCR data is continually updated so current data may slightly differ from what is contained in this report. Agency totals by month are available on the DPS website.

Brewster County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX0220100	**ALPINE PD**	**5,757**													
	Number of Offenses		0	0	1	0	7	3	7	0	2	0	0	20	12
	Rate Per 100,000		0.0	0.0	17.4	0.0	121.6	52.1	121.6	0.0	34.7	0.0	0.0	347.4	
	Number of Clearances		0	0	0	0	1	1	0	0	0	0	0	2	
	Percent Cleared		0.0	0.0	0.0	0.0	14.3	33.3	0.0	0.0	0.0	0.0	0.0	10.0	
	Number of Arrests		0	0	0	0	1	1	0	0	0	0	0	2	
TX0220000	**BREWSTER CO SO**	**3,634**	0	0	0	0	0	0	0	0	0	0	0		0
	Number of Offenses		0	0	0	1	2	2	5	3	0	0	0	13	12
	Rate Per 100,000		0.0	0.0	0.0	27.5	55.0	55.0	137.6	82.6	0.0	0.0	0.0	357.7	
	Number of Clearances		0	0	0	0	1	0	0	0	0	0	0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	50.0	0.0	0.0	0.0	0.0	0.0	0.0	7.7	
	Number of Arrests		0	0	0	0	1	0	0	0	0	0	0	1	
TX0220200	**SUL ROSS STATE UNIV PD**	**0**	0	0	0	0	0	0	0	0	0	0	0		0
	Number of Offenses		0	0	0	0	0	3	3	0	0	0	0	6	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances		0	0	0	0	0	0	0	0	0	0	0	0	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Arrests		0	0	0	0	0	0	0	0	0	0	0	0	
	County Totals - Brewster County		0	0	0	0	0	0	0	0	0	0	0		0
	Population	**9,391**	0	0	0	0	0	0	0	0	0	0	0		0
	Number of Offenses		0	0	1	1	9	8	15	3	2	0	0	39	
	Rate Per 100,000		0.0	0.0	10.6	10.6	95.8	85.2	159.7	31.9	21.3	0.0	0.0	415.3	
	Number of Clearances		0	0	0	0	2	1	0	0	0	0	0	3	
	Percent Cleared		0.0	0.0	0.0	0.0	22.2	12.5	0.0	0.0	0.0	0.0	0.0	7.7	
	Number of Arrests		0	0	0	0	2	1	0	0	0	0	0	3	

Cameron County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX0312400	**BROWNSVILLE ISD PD**	**0**													
	Number of Offenses		0	0	0	0	17	3	84	0	0	0	0	104	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances		0	0	0	0	7	0	2	0	0	0	0	9	
	Percent Cleared		0.0	0.0	0.0	0.0	41.2	0.0	2.4	0.0	0.0	0.0	0.0	8.7	
	Number of Arrests		0	0	0	0	7	0	3	0	0	0	0	10	
TX0310100	**BROWNSVILLE PD**	**188,906**													
	Number of Offenses		4	2	71	127	615	398	2,880	189	17	1	0	4,304	12
	Rate Per 100,000		2.1	1.1	37.6	67.2	325.6	210.7	1,524.6	100.0	9.0	0.5	0.0	2,278.4	
	Number of Clearances		3	2	8	38	229	114	410	30	3	0	0	837	
	Percent Cleared		75.0	100.0	11.3	29.9	37.2	28.6	14.2	15.9	17.6	0.0	0.0	19.4	
	Number of Arrests		4	2	9	79	203	178	497	32	3	0	0	1,007	
TX0310000	**CAMERON CO SO**	**96,998**													
	Number of Offenses		4	1	51	17	210	156	461	96	7	0	0	1,003	12
	Rate Per 100,000		4.1	1.0	52.6	17.5	216.5	160.8	475.3	99.0	7.2	0.0	0.0	1,034.0	
	Number of Clearances		2	0	2	6	78	16	22	7	1	0	0	134	
	Percent Cleared		50.0	0.0	3.9	35.3	37.1	10.3	4.8	7.3	14.3	0.0	0.0	13.4	
	Number of Arrests		3	0	2	7	99	14	27	4	1	0	0	157	
TX0310200	**COMBES PD**	**3,071**													
	Number of Offenses		0	0	2	0	6	7	22	9	0	0	0	46	12
	Rate Per 100,000		0.0	0.0	65.1	0.0	195.4	227.9	716.4	293.1	0.0	0.0	0.0	1,497.9	
	Number of Clearances		0	0.0	0	0	0	1	1	1	0.0	0.0	0.0	3	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	14.3	4.5	11.1	0.0	0.0	0.0	6.5	
	Number of Arrests		0	0.0	0	0	0	1	2	0	0	0	0	3	
TX0310300	**HARLINGEN PD**	**72,047**													
	Number of Offenses		3	0	11	52	167	260	1,646	128	11	1	0	2,279	12
	Rate Per 100,000		4.2	0.0	15.3	72.2	231.8	360.9	2,284.6	177.7	15.3	1.4	0.0	3,163.2	
	Number of Clearances		2	0	6	15	92	57	229	16	1	1	0	419	
	Percent Cleared		66.7	0.0	54.5	28.8	55.1	21.9	13.9	12.5	9.1	100.0	0.0	18.4	
	Number of Arrests		2	0	4	19	70	44	232	24	1	1	0	397	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX0310400	**LA FERIA PD**	**6,791**													
	Number of Offenses			0	0	8	2	24	23	135	7	0	0	199	12
	Rate Per 100,000			0.0	0.0	117.8	29.5	353.4	338.7	1,987.9	103.1	0.0	0.0	2,930.3	
	Number of Clearances			0	0	3	1	13	7	19	1	0	0	44	
	Percent Cleared			0.0	0.0	37.5	50.0	54.2	30.4	14.1	14.3	0.0	0.0	22.1	
	Number of Arrests			0	0	1	2	12	11	18	1	0	0	45	
TX0312900	**LAGUNA VISTA PD**	**3,673**													
	Number of Offenses			0	0	1	0	0	5	10	0	0	0	16	12
	Rate Per 100,000			0.0	0.0	27.2	0.0	0.0	136.1	272.3	0.0	0.0	0.0	435.6	
	Number of Clearances			0	0	0	0	0	1	3	0	0	0	4	
	Percent Cleared			0.0	0.0	0.0	0.0	0.0	20.0	30.0	0.0	0.0	0.0	25.0	
	Number of Arrests			0	0	0	0	0	2	2	0	0	0	4	
TX0310500	**LOS FRESNOS PD**	**8,164**													
	Number of Offenses			0	0	2	0	33	4	106	4	0	0	149	12
	Rate Per 100,000			0.0	0.0	24.5	0.0	404.2	49.0	1,298.4	49.0	0.0	0.0	1,825.1	
	Number of Clearances			0	0	1	0	18	0	25	1	0	0	45	
	Percent Cleared			0.0	0.0	50.0	0.0	54.5	0.0	23.6	25.0	0.0	0.0	30.2	
	Number of Arrests			0	0	0	0	18	0	20	0	0	0	38	
TX0313100	**POINT ISABEL ISD PD**	**0**													
	Number of Offenses			0	0	0	0	0	0	0	0	0	0	0	12
	Rate Per 100,000			0	0	0	0	0	0	0	0	0	0	0	
	Number of Clearances			0	0	0	0	0	0	0	0	0	0	0	
	Percent Cleared			0	0	0	0	0	0	0	0	0	0	0	
	Number of Arrests			0	0	0	0	0	0	0	0	0	0	0	
TX0310600	**PORT ISABEL PD**	**5,165**													
	Number of Offenses			0	0	4	0	24	13	88	9	0	0	138	12
	Rate Per 100,000			0.0	0.0	77.4	0.0	464.7	251.7	1,703.8	174.2	0.0	0.0	2,671.8	
	Number of Clearances			0	0	2	0	19	2	21	1	0	0	45	
	Percent Cleared			0.0	0.0	50.0	0.0	79.2	15.4	23.9	11.1	0.0	0.0	32.6	
	Number of Arrests			0	0	1	0	11	2	26	0	0	0	40	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson		Commercial Sex Acts	Involuntary Servitude	Total	Months
TX0313400	**PORT OF BROWNSVILLE PD**		**0**													
	Number of Offenses			0	0	0	0	0	4	0	0	0	0	0	4	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances			0	0	0	0	0	0	0	0	0	0	0	0	
	Percent Cleared			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Arrests			0	0	0	0	0	0	0	0	0	0	0	0	
TX0310700	**PRIMERA PD**		**5,319**													
	Number of Offenses			0	0	0	0	4	1	6	1	0	0	0	12	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	75.2	18.8	112.8	18.8	0.0	0.0	0.0	225.6	
	Number of Clearances			0	0	0	0	2	0	1	0	0	0	0	3	
	Percent Cleared			0.0	0.0	0.0	0.0	50.0	0.0	16.7	0.0	0.0	0.0	0.0	25.0	
	Number of Arrests			0	0	0	0	2	0	0	0	0	0	0	2	
TX0313200	**RANCHO VIEJO PD**		**2,867**													
	Number of Offenses			0	0	0	0	0	4	14	1	0	0	0	19	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	0.0	139.5	488.3	34.9	0.0	0.0	0.0	662.7	
	Number of Clearances			0	0	0	0	0	1	3	0	0	0	0	4	
	Percent Cleared			0.0	0.0	0.0	0.0	0.0	25.0	21.4	0.0	0.0	0.0	0.0	21.1	
	Number of Arrests			0	0	0	0	0	1	5	0	0	0	0	6	
TX0310800	**RIO HONDO PD**		**2,012**													
	Number of Offenses			0	0	1	1	6	4	26	3	0	0	0	41	12
	Rate Per 100,000			0.0	0.0	49.7	49.7	298.2	198.8	1,292.2	149.1	0.0	0.0	0.0	2,037.8	
	Number of Clearances			0	0	0	1	4	0	6	0	0	0	0	11	
	Percent Cleared			0.0	0.0	0.0	100.0	66.7	0.0	23.1	0.0	0.0	0.0	0.0	26.8	
	Number of Arrests			0	0	0	2	6	4	6	0	0	0	0	18	
TX0310900	**SAN BENITO PD**		**24,712**													
	Number of Offenses			0	0	0	10	118	65	327	34	2	1	10	567	12
	Rate Per 100,000			0.0	0.0	0.0	40.5	477.5	263.0	1,323.2	137.6	8.1	4.0	40.5	2,294.4	
	Number of Clearances			0	0	0	2	37	6	35	6	1	0	6	93	
	Percent Cleared			0.0	0.0	0.0	20.0	31.4	9.2	10.7	17.6	50.0	0.0	60.0	16.4	
	Number of Arrests			1	0	0	4	41	12	51	7	1	0	0	117	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson		Commercial Sex Acts	Involuntary Servitude	Total	Months
TX0312800	**SANTA ROSA ISD PD**		**0**													
	Number of Offenses			0	0	0	0	0	0	0	0	0	0	0	0	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances			0	0	0	0	0	0	0	0	0	0	0	0	
	Percent Cleared			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Arrests			0	0	0	0	0	0	0	0	0	0	0	0	
TX0311300	**SOUTH PADRE ISLAND PD**		**2,048**													
	Number of Offenses			0	0	12	5	15	12	257	19	0	0	0	320	12
	Rate Per 100,000			0.0	0.0	585.9	244.1	732.4	585.9	12,548.8	927.7	0.0	0.0	0.0	15,625.0	
	Number of Clearances			0	0	0	2	6	2	30	3	0	0	0	43	
	Percent Cleared			0.0	0.0	0.0	40.0	40.0	16.7	11.7	15.8	0.0	0.0	0.0	13.4	
	Number of Arrests			0	0	1	3	7	2	36	2	0	0	0	51	
TX0311400	TSTC: HARLINGEN PD		0													
	Number of Offenses			0	0	0	0	0	0	1	0	0	0	0	1	12
	Rate Per 100,000			0	0	0	0	0	0	0	0	0	0	0	0	
	Number of Clearances			0	0	0	0	0	0	1	0	0	0	0	1	
	Percent Cleared			0.0	0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	100.0	
	Number of Arrests			0	0	0	0	0	0	0	0	0	0	0	0	
	County Totals - Cameron County															
	Population		421773													
	Number of Offenses			11	3	163	214	1,239	959	6,063	500	37	3	10	9,202	
	Rate Per 100,000			2.6	0.7	38.6	50.7	293.8	227.4	1,437.5	118.5	8.8	0.7	2.4	2,181.7	
	Number of Clearances			7	2	22	65	505	207	808	66	6	1	6	1,695	
	Percent Cleared			63.6	66.7	13.5	30.4	40.8	21.6	13.3	13.2	16.2	33.3	60.0	18.4	
	Number of Arrests			10	2	18	116	476	271	925	70	6	1	0	1,895	

El Paso County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX0710100	**ANTHONY PD**	**3,662**													
	Number of Offenses		0	0	2	3	4	0	30	10	0	0	0	49	12
	Rate Per 100,000		0.0	0.0	54.6	81.9	109.2	0.0	819.2	273.1	0.0	0.0	0.0	1,338.1	
	Number of Clearances		0	0	1	2	4	0	5	4	0	0	0	16	
	Percent Cleared		0.0	0.0	50.0	66.7	100.0	0.0	16.7	40.0	0.0	0.0	0.0	32.7	
	Number of Arrests		0	0	1	4	3	0	0	4	0	0	0	12	
TX0711200	**CLINT PD**	**925**													
	Number of Offenses		0	0	0	0	0	0	0	0	0	0	0	0	0
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances		0	0	0	0	0	0	0	0	0	0	0	0	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Arrests		0	0	0	0	0	0	0	0	0	0	0	0	
TX0710000	**EL PASO CO SO**	**120,450**													
	Number of Offenses		10	3	42	31	276	135	642	192	12	0	0	1,343	12
	Rate Per 100,000		8.3	2.5	34.9	25.7	229.1	112.1	533.0	159.4	10.0	0.0	0.0	1,115.0	
	Number of Clearances		8	0	14	9	136	21	93	36	3	0	0	320	
	Percent Cleared		80.0	0.0	33.3	29.0	49.3	15.6	14.5	18.8	25.0	0.0	0.0	23.8	
	Number of Arrests		14	0	8	8	80	12	78	15	3	0	0	218	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX0711100	EL PASO COMM COLLEGE PD		0												
	Number of Offenses			0	0	0	0	0	0	9	0	0	0	9	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances			0	0.0	0	0	0	0	2	0	0.0	0.0	2	
	Percent Cleared			0.0	0.0	0.0	0.0	0.0	0.0	22.2	0.0	0.0	0.0	22.2	
	Number of Arrests			0	0.0	0	0	0	0	1	0	0	0	1	
TX0711300	EL PASO ISD PD		0												
	Number of Offenses			0	0	4	2	11	14	63	1	1	0	96	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances			0	0	1	2	3	2	4	1	0	0	13	
	Percent Cleared			0.0	0.0	25.0	100.0	27.3	14.3	6.3	100.0	0.0	0.0	13.5	
	Number of Arrests			0	0	0	1	5	7	0	1	0	0	14	
TX0710200	EL PASO PD		678,232												
	Number of Offenses			22	5	288	267	1,541	969	6,954	1,408	61	1	0	11,516	12
	Rate Per 100,000			3.2	0.7	42.5	39.4	227.2	142.9	1,025.3	207.6	9.0	0.1	0.0	1,697.9	
	Number of Clearances			18	4	28	104	607	256	688	181	11	1	0	1,898	
	Percent Cleared			81.8	80.0	9.7	39.0	39.4	26.4	9.9	12.9	18.0	100.0	0.0	16.5	
	Number of Arrests			21	2	23	133	504	264	665	150	12	0	0	1,774	
TX0711400	HORIZON CITY PD		23,726												
	Number of Offenses			0	0	4	1	28	24	142	32	0	0	0	231	12
	Rate Per 100,000			0.0	0.0	16.9	4.2	118.0	101.2	598.5	134.9	0.0	0.0	0.0	973.6	
	Number of Clearances			0	0	0	0	8	4	15	1	0	0	0	28	
	Percent Cleared			0.0	0.0	0.0	0.0	28.6	16.7	10.6	3.1	0.0	0.0	0.0	12.1	
	Number of Arrests			0	0	0	0	7	3	7	1	0	0	0	18	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX0712800	**SAN ELIZARIO MARSHAL'S OFFICE**	**10,080**													
	Number of Offenses			0	0	0	1	3	6	19	5	0	0	34	12
	Rate Per 100,000			0.0	0.0	0.0	9.9	29.8	59.5	188.5	49.6	0.0	0.0	337.3	
	Number of Clearances			0	0	0	1	3	1	2	1	0	0	8	
	Percent Cleared			0.0	0.0	0.0	100.0	100.0	16.7	10.5	20.0	0.0	0.0	23.5	
	Number of Arrests			0	0	0	1	3	1	1	1	0	0	7	
TX0712200	**SOCORRO ISD PD**	**0**													
	Number of Offenses			0	0	5	1	18	2	16	2	1	0	45	12
	Rate Per 100,000			0	0	0	0	0	0	0	0	0	0	0	
	Number of Clearances			0	0	0	1	15	1	6	1	1	0	25	
	Percent Cleared			0	0	0	100	83	50	38	50	100	0	56	
	Number of Arrests			0	0	1	1	9	1	8	0	1	0	21	
TX0711600	**SOCORRO PD**	**37,952**													
	Number of Offenses			3	0	22	9	51	42	182	57	1	0	367	12
	Rate Per 100,000			7.9	0.0	58.0	23.7	134.4	110.7	479.6	150.2	2.6	0.0	967.0	
	Number of Clearances			0	0	3	5	16	5	9	6	1	0	45	
	Percent Cleared			0.0	0.0	13.6	55.6	31.4	11.9	4.9	10.5	100.0	0.0	12.3	
	Number of Arrests			0	0	2	6	13	5	8	6	1	0	41	
TX0710400	**UNIV OF TX: EL PASO PD**	**0**													
	Number of Offenses			0	0	0	0	6	3	91	3	1	0	104	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances			0	0	0	0	2	1	3	0	0	0	6	
	Percent Cleared			0.0	0.0	0.0	0.0	33.3	33.3	3.3	0.0	0.0	0.0	5.8	
	Number of Arrests			0	0	0	0	1	0	0	0	0	0	1	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
	County Totals - El Paso County														
	Population		875,027												
	Number of Offenses			35.0	8.0	367.0	315.0	1,938.0	1,195.0	8,148.0	1,710.0	77.0	1.0	0.0	13,794.0
	Rate Per 100,000			4	0.9	41.9	36	222	136.6	931.2	195.4	8.8	0.1	0	1,576
	Number of Clearances			26.0	4.0	47.0	124.0	794.0	291.0	827.0	231.0	16.0	1.0	0.0	2,361.0
	Percent Cleared			74.3	50	12.8	39.4	41	24.4	10.1	13.5	20.8	100	0	17
	Number of Arrests			35	2	35	154	625	293	768	178	17	0	0	2107

Hidalgo County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1080100	**ALAMO PD**	**20,383**													
	Number of Offenses		1	0	20	14	81	153	637	48	1	0	0	955	12
	Rate Per 100,000		4.9	0.0	98.1	68.7	397.4	750.6	3,125.2	235.5	4.9	0.0	0.0		4,685.3
	Number of Clearances		0	0	1	2	13	5	59	2	0	0	0	82	
	Percent Cleared		0.0	0.0	5.0	14.3	16.0	3.3	9.3	4.2	0.0	0.0	0.0		8.6
	Number of Arrests		0	0	0	3	24	8	67	2	1	0	0	105	
TX1082300	**ALTON PD**	**19,391**													
	Number of Offenses		0	0	1	6	88	32	157	21	1	0	0	306	12
	Rate Per 100,000		0.0	0.0	5.2	30.9	453.8	165.0	809.7	108.3	5.2	0.0	0.0		1,578.1
	Number of Clearances		0	0	0	2	32	2	5	2	0	0	0	43	
	Percent Cleared		0.0	0.0	0.0	33.3	36.4	6.3	3.2	9.5	0.0	0.0	0.0		14.1
	Number of Arrests		0	0	0	2	37	1	6	3	0	0	0	49	
TX1080200	**DONNA PD**	**16,842**													
	Number of Offenses		2	1	10	6	174	54	346	46	4	2	0	645	12
	Rate Per 100,000		11.9	5.9	59.4	35.6	1,033.1	320.6	2,054.4	273.1	23.8	11.9	0.0		3,829.7
	Number of Clearances		0	0	0	1	52	2	24	3	1	0	0	83	
	Percent Cleared		0.0	0.0	0.0	16.7	29.9	3.7	6.9	6.5	25.0	0.0	0.0		12.9
	Number of Arrests		0	0	0	1	50	2	30	5	0	0	0	88	
TX1082500	**EDINBURG CISD PD**	**0**													
	Number of Offenses		0	0	2	0	0	0	9	0	0	0	0	11	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Clearances		0	0.0	0	0	0	0	0	0	0.0	0.0	0.0	0	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Arrests		0	0.0	0	0	0	0	0	0	0	0	0	0	
TX1080400	**EDINBURG PD**	**104,987**													
	Number of Offenses		3	0	68	59	223	229	2,008	86	6	0	0	2,682	12
	Rate Per 100,000		2.9	0.0	64.8	56.2	212.4	218.1	1,912.6	81.9	5.7	0.0	0.0		2,554.6
	Number of Clearances		2	0	13	21	99	41	280	23	0	0	0	479	
	Percent Cleared		66.7	0.0	19.1	35.6	44.4	17.9	13.9	26.7	0.0	0.0	0.0		17.9
	Number of Arrests		2	0	11	21	62	36	281	23	0	0	0	436	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson		Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1080500	**ELSA PD**		**5,683**													
	Number of Offenses			1	0	2	2	24	45	198	8	0	0	0	280	12
	Rate Per 100,000			17.6	0.0	35.2	35.2	422.3	791.8	3,484.1	140.8	0.0	0.0	0.0		4,927.0
	Number of Clearances			0	0	0	0	6	0	15	0	0	0	0	21	
	Percent Cleared			0.0	0.0	0.0	0.0	25.0	0.0	7.6	0.0	0.0	0.0	0.0		7.5
	Number of Arrests			0	0	0	0	5	3	22	1	0	0	0	31	
TX1081800	**HIDALGO CO CONSTABLE PCT: 1**		**0**													
	Number of Offenses			0	0	0	0	1	0	0	0	0	0	0	1	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Clearances			0	0	0	0	1	0	0	0	0	0	0	1	
	Percent Cleared			0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0.0	0.0		100.0
	Number of Arrests			0	0	0	0	1	0	0	0	0	0	0	1	
TX1080000	**HIDALGO CO SO**		**262,967**													
	Number of Offenses			14	0	100	100	353	559	1,887	397	14	0	0	3,424	12
	Rate Per 100,000			5.3	0.0	38.0	38.0	134.2	212.6	717.6	151.0	5.3	0.0	0.0		1,302.1
	Number of Clearances			6	0	16	26	115	57	123	62	7	0	0	412	
	Percent Cleared			42.9	0.0	16.0	26.0	32.6	10.2	6.5	15.6	50.0	0.0	0.0		12.0
	Number of Arrests			8	0	9	31	90	45	97	31	3	0	0	314	
TX1080600	**HIDALGO PD**		**14,468**													
	Number of Offenses			1	4	4	3	2	16	163	20	1	0	0	214	12
	Rate Per 100,000			6.9	27.6	27.6	20.7	13.8	110.6	1,126.6	138.2	6.9	0.0	0.0		1,479.1
	Number of Clearances			0	2	2	0	0	2	20	2	0	0	0	28	
	Percent Cleared			0.0	50.0	50.0	0.0	0.0	12.5	12.3	10.0	0.0	0.0	0.0		13.1
	Number of Arrests			0	1	2	0	1	1	18	2	0	0	0	25	
TX1081500	**LA JOYA PD**		**4,666**													
	Number of Offenses			0	0	5	0	17	8	15	0	0	0	0	45	12
	Rate Per 100,000			0.0	0.0	107.2	0.0	364.3	171.5	321.5	0.0	0.0	0.0	0.0		964.4
	Number of Clearances			0	0	2	0	8	0	0	0	0	0	0	10	
	Percent Cleared			0.0	0.0	40.0	0.0	47.1	0.0	0.0	0.0	0.0	0.0	0.0		22.2
	Number of Arrests			0	0	2	0	8	0	2	0	0	0	0	12	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson		Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1080700	**LA VILLA PD**		**2,782**													
	Number of Offenses			0	0	2	0	4	4	20	1	0	0	0	31	6
	Rate Per 100,000			0.0	0.0	71.9	0.0	143.8	143.8	718.9	35.9	0.0	0.0	0.0		1,114.3
	Number of Clearances			0	0	0	0	1	0	0	0	0	0	0	1	
	Percent Cleared			0.0	0.0	0.0	0.0	25.0	0.0	0.0	0.0	0.0	0.0	0.0		3.2
	Number of Arrests			0	0	0	0	1	0	0	0	0	0	0	1	
TX1082600	**MCALLEN ISD PD**		**0**													
	Number of Offenses			0	0	0	0	4	0	43	1	0	0	0	48	12
	Rate Per 100,000			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Clearances			0	0	0	0	1	0	3	0	0	0	0	4	
	Percent Cleared			0.0	0.0	0.0	0.0	25.0	0.0	7.0	0.0	0.0	0.0	0.0		8.3
	Number of Arrests			0	0	0	0	0	0	0	0	0	0	0	0	
TX1080800	**MCALLEN PD**		**145,510**													
	Number of Offenses			5	6	58	42	180	159	2,618	63	13	0	0	3,144	12
	Rate Per 100,000			3.4	4.1	39.9	28.9	123.7	109.3	1,799.2	43.3	8.9	0.0	0.0		2,160.7
	Number of Clearances			4	5	35	33	139	61	470	22	6	0	0	775	
	Percent Cleared			80.0	83.3	60.3	78.6	77.2	38.4	18.0	34.9	46.2	0.0	0.0		24.7
	Number of Arrests			11	4	33	47	88	67	420	41	4	0	0	715	
TX1080900	**MERCEDES PD**		**16,365**													
	Number of Offenses			0	0	11	7	111	46	388	40	4	0	0	607	12
	Rate Per 100,000			0.0	0.0	67.2	42.8	678.3	281.1	2,370.9	244.4	24.4	0.0	0.0		3,709.1
	Number of Clearances			0	0	7	0	46	4	27	4	0	0	0	88	
	Percent Cleared			0.0	0.0	63.6	0.0	41.4	8.7	7.0	10.0	0.0	0.0	0.0		14.5
	Number of Arrests			0	0	9	0	40	5	30	4	0	0	0	88	
TX1081000	**MISSION PD**		**86,577**													
	Number of Offenses			1	0	74	30	189	160	1,174	117	6	3	0	1,754	12
	Rate Per 100,000			1.2	0.0	85.5	34.7	218.3	184.8	1,356.0	135.1	6.9	3.5	0.0		2,025.9
	Number of Clearances			1	0	11	7	65	17	111	17	0	0	0	229	
	Percent Cleared			100.0	0.0	14.9	23.3	34.4	10.6	9.5	14.5	0.0	0.0	0.0		13.1
	Number of Arrests			1	0	8	12	53	23	97	17	0	0	0	211	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson		Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1083500	**PALMHURST PD**		**2,600**													
	Number of Offenses			0	0	1	1	4	4	172	1	0	0	0	183	12
	Rate Per 100,000			0.0	0.0	38.5	38.5	153.8	153.8	6,615.4	38.5	0.0	0.0	0.0		7,038.5
	Number of Clearances			0	0	0	0	2	0	28	0	0	0	0	30	
	Percent Cleared			0.0	0.0	0.0	0.0	50.0	0.0	16.3	0.0	0.0	0.0	0.0		16.4
	Number of Arrests			0	0	0	0	2	0	28	0	0	0	0	30	
TX1082200	**PALMVIEW PD**		**15,919**													
	Number of Offenses			0	1	5	7	58	70	144	13	0	0	0	298	12
	Rate Per 100,000			0.0	6.3	31.4	44.0	364.3	439.7	904.6	81.7	0.0	0.0	0.0		1,872.0
	Number of Clearances			0	1	2	1	27	7	8	1	0	0	0	47	
	Percent Cleared			0.0	100.0	40.0	14.3	46.6	10.0	5.6	7.7	0.0	0.0	0.0		15.8
	Number of Arrests			0	1	2	1	20	7	10	2	0	0	0	43	
TX1083000	**PENITAS PD**		**6,348**													
	Number of Offenses			0	0	2	1	3	5	25	2	0	0	0	38	12
	Rate Per 100,000			0.0	0.0	31.5	15.8	47.3	78.8	393.8	31.5	0.0	0.0	0.0		598.6
	Number of Clearances			0	0	0	0	1	0	3	0	0	0	0	4	
	Percent Cleared			0.0	0.0	0.0	0.0	33.3	0.0	12.0	0.0	0.0	0.0	0.0		10.5
	Number of Arrests			0	0	0	0	1	0	3	0	0	0	0	4	
TX1081100	**PHARR PD**		**79,558**													
	Number of Offenses			0	3	55	27	126	163	934	111	0	0	0	1,419	12
	Rate Per 100,000			0.0	3.8	69.1	33.9	158.4	204.9	1,174.0	139.5	0.0	0.0	0.0		1,783.6
	Number of Clearances			0	1	4	6	31	10	36	6	0	0	0	94	
	Percent Cleared			0.0	33.3	7.3	22.2	24.6	6.1	3.9	5.4	0.0	0.0	0.0		6.6
	Number of Arrests			0	1	4	4	28	13	42	6	0	0	0	98	
TX1081300	**SAN JUAN PD**		**35,806**													
	Number of Offenses			0	0	11	14	71	79	560	52	2	0	0	789	12
	Rate Per 100,000			0.0	0.0	30.7	39.1	198.3	220.6	1,564.0	145.2	5.6	0.0	0.0		2,203.5
	Number of Clearances			0	0	1	4	20	2	22	3	1	0	0	53	
	Percent Cleared			0.0	0.0	9.1	28.6	28.2	2.5	3.9	5.8	50.0	0.0	0.0		6.7
	Number of Arrests			0	0	1	8	28	2	27	4	1	0	0	71	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1083200	**SULLIVAN CITY PD**	**3,896**													
	Number of Offenses			0	0	0	1	10	12	26	2	0	0	0	51	12
	Rate Per 100,000			0.0	0.0	0.0	25.7	256.7	308.0	667.4	51.3	0.0	0.0	0.0		1,309.0
	Number of Clearances			0	0	0	0	1	0	2	0	0	0	0	3	
	Percent Cleared			0.0	0.0	0.0	0.0	10.0	0.0	7.7	0.0	0.0	0.0	0.0		5.9
	Number of Arrests			0	0	0	0	4	0	2	0	0	0	0	6	
TX1084100	**UNIV OF TX: RIO GRANDE VALLEY PD**	**0**													
	Number of Offenses			0	0	2	0	1	2	55	1	0	0	0	61	12
	Rate Per 100,000			0	0	0	0	0	0	0	0	0	0	0	0	
	Number of Clearances			0.0	0.0	1.0	0.0	0.0	0.0	7.0	1.0	0.0	0.0	0.0		9.0
	Percent Cleared			0	0	50	0	0	0	13	100	0	0	0	15	
	Number of Arrests			0.0	0.0	1.0	0.0	0.0	0.0	1.0	0.0	0.0	0.0	0.0		2.0
TX1081400	**WESLACO PD**	**41,478**													
	Number of Offenses			1	1	25	26	95	126	1,088	33	0	0	0	1,395	12
	Rate Per 100,000			2.4	2.4	60.3	62.7	229	303.8	2,623.1	79.6	0	0	0		3,363.2
	Number of Clearances			1	1	3	8	54	10	162	2	0	0	0		241
	Percent Cleared			100	100	12	30.7692	56.8421	7.9365	14.8897	6.0606	0	0	0		17.276
	Number of Arrests			1	0	1	8	52	6	169	1	0	0	0		238
	County Totals - Hidalgo County															
	Population	**886,226**														
	Number of Offenses			29	16	458	346	1,819	1,926	12,667	1,063	52	5	0		18,381
	Rate Per 100,000			3.3	1.8	51.7	39	205.3	217.3	1,429.3	119.9	5.9	0.6	0		2,074.1
	Number of Clearances			14	10	98	111	714	220	1,405	150	15	0	0		2,737
	Percent Cleared			48.3	62.5	21.4	32.1	39.3	11.4	11.1	14.1	28.8	0	0		14.9
	Number of Arrests			23	7	83	138	595	219	1352	142	9	0	0		2,568

Hudspeth County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1150000	**HUDSPETH CO SO**	**3,401**													
	Number of Offenses		0	0	0	0	0	1	0	1	0	0	0	2	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	29.4	0.0	29.4	0.0	0.0	0.0		58.8
	Number of Clearances		0	0	0	0	0	1	0	0	0	0	0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0.0		50.0
	Number of Arrests		0	0	0	0	0	1	1	0	0	0	0	2	
	County Totals - Hudspeth County														
	Population	**3,401**													
	Number of Offenses		0	0	0	0	0	1	0	1	0.0	0.0	0.0	2	
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	29.4	0.0	29.4	0.0	0.0	0.0		58.8
	Number of Clearances		0	0	0	0	0	1	0	0	0	0	0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0.0		50.0
	Number of Arrests		0	0	0	0	0	1	1	0	0	0	0	2	

Jeff Davis County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1150000	**HUDSPETH CO SO**	**3,401**													
	Number of Offenses		0	0	0	0	0	1	0	1	0	0	0	2	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	29.4	0.0	29.4	0.0	0.0	0.0		58.8
	Number of Clearances		0	0	0	0	0	1	0	0	0	0	0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0.0		50.0
	Number of Arrests		0	0	0	0	0	1	1	0	0	0	0	2	
	County Totals - Hudspeth County														
	Population	**3,401**													
	Number of Offenses		0	0	0	0	0	1	0	1	0.0	0.0	0.0	2	
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	29.4	0.0	29.4	0.0	0.0	0.0		58.8
	Number of Clearances		0	0	0	0	0	1	0	0	0	0	0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0.0		50.0
	Number of Arrests		0	0	0	0	0	1	1	0	0	0	0	2	

Maverick County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1620100	**EAGLE PASS PD**	**28,811**													
	Number of Offenses		0	0	1	10	51	159	513	82	2	0	0	818	12
	Rate Per 100,000		0.0	0.0	3.5	34.7	177.0	551.9	1,780.6	284.6	6.9	0.0	0.0	2,839.2	
	Number of Clearances		0	0	1	4	24	23	80	31	2	0	0	165	
	Percent Cleared		0.0	0.0	100.0	40.0	47.1	14.5	15.6	37.8	100.0	0.0	0.0	20.2	
	Number of Arrests		0	0	0	8	23	25	84	28	2	0	0	170	
TX1620000	**MAVERICK CO SO**	**29,808**													
	Number of Offenses		0	0	15	6	69	175	253	53	1	0	0	572	12
	Rate Per 100,000		0	0	50	20	232	587	849	178	3.4	0.0	0.0	1,919	
	Number of Clearances		0.0	0.0	0.0	0.0	23.0	9.0	10.0	10.0	0.0	0.0	0.0	52.0	
	Percent Cleared		0	0	0	0	33	5	4	19	0	0	0	9	
	Number of Arrests		0.0	0.0	0.0	0.0	18.0	14.0	15.0	8.0	0.0	0.0	0.0	55.0	
	County Totals - Maverick County														
	Population	**58,619**													
	Number of Offenses		0	0	16	16	120	334	766	135	3	0	0	1,390	
	Rate Per 100,000		0	0	27.3	27.3	204.7	569.8	1,306.7	230.3	5.1	0	0	2,371.2	
	Number of Clearances		0	0	1	4	47	32	90	41	2	0	0	217	
	Percent Cleared		0	0	6.3	25	39.2	9.6	11.7	30.4	66.7	0	0	15.6	
	Number of Arrests		0	0	0	8	41	39	99	36	2	0	0	225	

Presidio County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX1890100	**MARFA PD**	**1,749**													
	Number of Offenses		0	0	0	0	2	0	3	1	0	0	0	6	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	114.4	0.0	171.5	57.2	0.0	0.0	0.0		343.1
	Number of Clearances		0	0	0	0	1	0	1	0	0	0	0	2	
	Percent Cleared		0.0	0.0	0.0	0.0	50.0	0.0	33.3	0.0	0.0	0.0	0.0		33.3
	Number of Arrests		0	0	0	0	1	0	1	0	0	0	0	2	
TX1890000	**PRESIDIO CO SO**	**1,131**													
	Number of Offenses		0	0	0	0	0	1	0	0	0	0	0	1	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	88.4	0.0	0.0	0.0	0.0	0.0		88.4
	Number of Clearances		0	0	0	0	0	1	0	0	0	0	0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0.0		100.0
	Number of Arrests		0	0	0	0	0	3	0	0	0	0	0	3	
	County Totals - Presidio County														
	Population	**2,615**													
	Number of Offenses		0	0	0	0	2	1	3	1	0	0	0	7	
	Rate Per 100,000		0.0	0.0	0.0	0.0	69.4	34.7	104.2	34.7	0.0	0.0	0.0		243.1
	Number of Clearances		0	0	0	0	1	1	1	0	0	0	0	3	
	Percent Cleared		0.0	0.0	0.0	0.0	50.0	100.0	33.3	0.0	0.0	0.0	0.0		42.9
	Number of Arrests		0	0	0	0	1	3	1	0	0	0	0	5	

Starr County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX2140100	**LA GRULLA PD**	**1,208**													
	Number of Offenses		0	0	0	2	2	1	4	3	1	0	0	13	12
	Rate Per 100,000		0.0	0.0	0.0	165.6	165.6	82.8	331.1	248.3	82.8	0.0	0.0	1,076.2	
	Number of Clearances		0	0	0	2	0	0	0	0	0	0	0	2	
	Percent Cleared		0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	15.4	
	Number of Arrests		0	0	0	1	0	0	0	0	0	0	0	1	
TX2141000	**RIO GRANDE CITY ISD PD**	**0**													
	Number of Offenses		0	0	0	0	0	0	6	0	0	0	0	6	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances		0	0	0	0	0	0	0	0	0	0	0	0	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Arrests		0	0	0	0	2	0	0	0	0	0	0	2	
TX2140200	**RIO GRANDE CITY PD**	**15,705**													
	Number of Offenses		1	0	0	2	20	71	179	22	1	0	0	296	12
	Rate Per 100,000		6.4	0.0	0.0	12.7	127.3	452.1	1,139.8	140.1	6.4	0.0	0.0	1,884.8	
	Number of Clearances		0	0.0	0	0	7	4	22	1	1.0	0.0	0.0	35	
	Percent Cleared		0.0	0.0	0.0	0.0	35.0	5.6	12.3	4.5	100.0	0.0	0.0	11.8	
	Number of Arrests		0	0.0	0	0	6	5	25	1	1.0	0.0	0.0	38	
TX2141100	**ROMA ISD PD**	**0**													
	Number of Offenses		0	0	0	0	0	0	1	0	0	0	0	1	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
	Number of Clearances		0	0.0	0	0	0	0	1	0	0.0	0.0	0.0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	100.0	
	Number of Arrests		0	0.0	0	0	0	0	0	0	0	0	0	0	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX2140300	**ROMA PD**		**11,547**												
	Number of Offenses			0	0	2	2	35	11	65	9	0	0	0	124	12
	Rate Per 100,000			0.0	0.0	17.3	17.3	303.1	95.3	562.9	77.9	0.0	0.0	0.0	1,073.9	
	Number of Clearances			0	0	2	1	28	2	16	1	0	0	0	50	
	Percent Cleared			0.0	0.0	100.0	50.0	80.0	18.2	24.6	11.1	0.0	0.0	0.0	40.3	
	Number of Arrests			0	0	3	1	19	2	17	4	0	0	0	46	
TX2140000	**STARR CO SO**		**38,202**												
	Number of Offenses			0	0	8	3	33	50	55	28	2	0	0	179	12
	Rate Per 100,000			0.0	0.0	20.9	7.9	86.4	130.9	144.0	73.3	5.2	0.0	0.0	468.6	
	Number of Clearances			0	0	0	0	12	4	2	4	0	0	0	22	
	Percent Cleared			0.0	0.0	0.0	0.0	36.4	8.0	3.6	14.3	0.0	0.0	0.0	12.3	
	Number of Arrests			0	0	0	0	10	4	2	4	0	0	0	20	
	County Totals - Starr County														
	Population		**66,662**												
	Number of Offenses			1	0	10	9	90	133	310	62	4	0	0	619	
	Rate Per 100,000			1.5	0.0	15.0	13.5	135.0	199.5	465.0	93.0	6.0	0.0	0.0	928.6	
	Number of Clearances			0	0	2	3	47	10	41	6	1	0	0	110	
	Percent Cleared			0.0	0.0	20.0	33.3	52.2	7.5	13.2	9.7	25.0	0.0	0.0	17.8	
	Number of Arrests			0	0	3	2	37	11	44	9	1	0	0	107	

Val Verde County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX2330100	**DEL RIO PD**	**34,495**													
	Number of Offenses		1	1	16	13	45	147	310	31	7	0	0	571	12
	Rate Per 100,000		2.9	2.9	46.4	37.7	130.5	426.1	898.7	89.9	20.3	0.0	0.0		1,655.3
	Number of Clearances		1	0	1	4	20	24	9	7	1	0	0	67	
	Percent Cleared		100.0	0.0	6.3	30.8	44.4	16.3	2.9	22.6	14.3	0.0	0.0		11.7
	Number of Arrests		3	0	0	4	14	19	7	6	0	0	0	53	
TX2330000	**VAL VERDE CO SO**	**13,336**													
	Number of Offenses		1	0	12	11	34	44	82	8	3	0	0	195	12
	Rate Per 100,000		7.5	0	90	83	255	330	615	60	22.5	0.0	0.0	1,462	
	Number of Clearances		1.0	0.0	0.0	3.0	19.0	3.0	2.0	2.0	0.0	0.0	0.0		30.0
	Percent Cleared		100	0	0	27	56	7	2	25	0	0	0	15	
	Number of Arrests		2.0	0.0	2.0	3.0	12.0	5.0	8.0	3.0	0.0	0.0	0.0		35.0
	County Totals - Val Verde County														
	Population	**47,831**													
	Number of Offenses		2	1	28	24	79	191	392	39	10	0	0		766
	Rate Per 100,000		4.2	2.1	58.5	50.2	165.2	399.3	819.6	81.5	20.9	0	0		1,601.5
	Number of Clearances		2	0	1	7	39	27	11	9	1	0	0		97
	Percent Cleared		100	0	3.6	29.2	49.4	14.1	2.8	23.1	10	0	0		12.7
	Number of Arrests		5	0	2	7	26	24	15	9	0	0	0		88

Webb County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX2401100	**LAREDO ISD PD**	**0**													
	Number of Offenses		0	0	0	0	6	0	3	0	1	0	0	10	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Clearances		0	0	0	0	5	0	0	0	1	0	0	6	
	Percent Cleared		0.0	0.0	0.0	0.0	83.3	0.0	0.0	0.0	100.0	0.0	0.0		60.0
	Number of Arrests		0	0	0	0	8	0	1	0	1	0	0	10	
TX2400100	**LAREDO PD**	**256,973**													
	Number of Offenses		12	1	67	130	602	403	2,610	277	35	0	26	4,163	12
	Rate Per 100,000		4.7	0.4	26.1	50.6	234.3	156.8	1,015.7	107.8	13.6	0.0	10.1		1,620.0
	Number of Clearances		9	1	13	64	275	94	561	69	2	0	24	1,112	
	Percent Cleared		75.0	100.0	19.4	49.2	45.7	23.3	21.5	24.9	5.7	0.0	92.3		26.7
	Number of Arrests		12	0	18	82	233	87	707	59	5	0	7	1,210	
TX2400600	**TX A&M UNIV: INTERNATIONAL PD**	**0**													
	Number of Offenses		0	0	1	0	0	0	14	0	0	0	0	15	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Clearances		0	0	0	0	0	0	0	0	0	0	0	0	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Arrests		0	0	0	0	0	0	0	0	0	0	0	0	
TX2400700	**UNITED ISD PD**	**0**													
	Number of Offenses		0	0	0	0	0	0	0	0	0	0	0	0	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Clearances		0	0	0	0	0	0	0	0	0	0	0	0	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		0.0
	Number of Arrests		0	0.0	0	0	0	0	0	0	0	0	0	0	

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX2400000	**WEBB CO SO**		**8,945**												
	Number of Offenses			0	1	9	3	31	26	80	28	2	2	66	248	12
	Rate Per 100,000			0	11.2	101	34	347	291	894	313	22.4	22.4	737.8	2,773	
	Number of Clearances			0.0	1.0	2.0	0.0	4.0	2.0	5.0	18.0	1.0	1.0	59.0		93.0
	Percent Cleared			0	100	22	0	13	8	6	64	50	50	89.3939	38	
	Number of Arrests			0.0	1.0	3.0	0.0	17.0	4.0	6.0	19.0	1.0	1.0	14.0		66.0
	County Totals - Webb County															
	Population		**265,918**													
	Number of Offenses			12	2	77	133	639	429	2,707	305	38	2	92		4,436
	Rate Per 100,000			4.5	0.8	29	50	240.3	161.3	1,018	114.7	14.3	0.8	34.6		1,668.2
	Number of Clearances			9	2	15	64	284	96	566	87	4	1	83		1,211
	Percent Cleared			75	100	19.5	48.1	44.4	22.4	20.9	28.5	10.5	50	90.2		27.3
	Number of Arrests			12	1	21	82	258	91	714	78	7	1	21		1,286

Zapata County

ORI Number	Agency	Pop.	Murder	Manslaughter by Negligence	Rape	Robbery	Assault	Burglary	Larceny	Auto Theft	Arson	Commercial Sex Acts	Involuntary Servitude	Total	Months
TX2530000	**ZAPATA CO SO**	**14,016**													
	Number of Offenses		0	0	0	0	5	12	20	0	0	0	0	37	12
	Rate Per 100,000		0.0	0.0	0.0	0.0	35.7	85.6	142.7	0.0	0.0	0.0	0.0		264.0
	Number of Clearances		0	0	0	0	0	0	1	0	0	0	0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	5.0	0.0	0.0	0.0	0.0		2.7
	Number of Arrests		0	0	0	0	0	0	0	0	0	0	0	0	
	County Totals - Zapata County														
	Population	**14,016**													
	Number of Offenses		0	0	0	0	5	12	20	0	0.0	0.0	0.0	37	
	Rate Per 100,000		0.0	0.0	0.0	0.0	35.7	85.6	142.7	0.0	0.0	0.0	0.0		264.0
	Number of Clearances		0	0	0	0	0	0	1	0	0	0	0	1	
	Percent Cleared		0.0	0.0	0.0	0.0	0.0	0.0	5.0	0.0	0.0	0.0	0.0		2.7
	Number of Arrests		0	0	0	0	0	0	0	0	0	0	0	0	

Chairman ARRINGTON. Thank you, Mr. Blair. Now we will yield five minutes to the pride of Kinney County, Texas, my friend, Mr. Brent Smith.

STATEMENT OF BRENT SMITH, KINNEY COUNTY ATTORNEY, TEXAS

Mr. SMITH. Thank you, Members, for holding this hearing. President Reagan once said, "A nation that cannot control its borders is not a nation." As I sit before you today, I can attest to the fact that we no longer have control of our borders. We have surrendered it to criminal cartels, and in doing so, have jeopardized our own national security. To give this topic the importance it deserves, one might argue that this hearing should take place in the banks of the Rio Grande. While doing so would jeopardize the personal safety of each one here, it would at least provide this Committee with a firsthand experience of what Texans are living like every day.

Kinney County shares 17 miles of border with Mexico and is located between Del Rio and Eagle Pass. While the jurisdiction of my office may be limited geographically to Kinney County, you can be certain that the facts of my testimony expand well beyond its borders and apply to every county along our southern border with Mexico.

For Texas, living on the border, words cannot adequately describe the conditions on the ground. Our homes are being broken into in the middle of the night. The main street of our small towns are now places of high-speed car chases with cartel smugglers. Walking outside on your own property after dark is no longer safe. To put it plainly, Texans no longer enjoy the safety and security of a sovereign border.

Kinney County has a population of only 3,200 residents, most of whom are farmers and ranchers.

In the year 2020, the county reported 134 criminal charges for prosecution. This drastically changed in 2021 after President Biden issued multiple executive orders revoking numerous border security policies that DHS was operating under to successfully secure our border. Shortly thereafter, criminal cartels seized control of our border and imposed their own policies that would allow their criminal enterprises to thrive.

In 2021, the number of criminal charges increased from 134 during the previous year to 2,708 in one year. In 2022, this number exploded once again to 6,800 criminal charges in the county. In 2023, there was 5,826 criminal charges, all beginning at 134.

Kinney County normally operates within a $6 million annual budget. However, the open border policies enacted by the Biden Administration has required the county to significantly expand the capacities of our local criminal justice system, costing Texas taxpayers an additional $10.5 million. Perhaps, however, the most significant cost that we have sustained during this border crisis is the loss of the safety and security we once enjoyed as Americans. In order to protect the safety of students attending the public school from the threat posed by high-speed car chases with cartel smugglers, the school administration was forced to erect military-style vehicle barricades around its own campus. On at least one occasion, the smuggled occupants of a vehicle breached these barriers

on foot and attempted to enter the school while the campus was on lockdown. In another incident, a county resident was forced off the highway during her commute to work when a human smuggler shot her vehicle multiple times in an effort to avoid capture by law enforcement. This resident was forced to quit her job due to the danger she subjected herself to by simply commuting to work.

The unmistakable sound of a helicopter in flight in Kinney County now causes families to bring their children inside the home and shelter in place until law enforcement gives an all clear. What dollar amount do you assign to the loss of safety and security? I am not certain, but I do know the cost is very high.

In an effort to provide adequate warning to residents of an ongoing law enforcement pursuit, a county wide text alert system has been in place, which undoubtedly has saved many lives. Even with such proactive measures in place, two tax-paying residents have died because emergency medical services were not available when they were needed the most. On both occasions, all available paramedics were deployed to human smuggling events miles away and were unable to respond to the county resident. This is a clear example of how an open border policy has deadly consequences for Americans across this nation.

The violence and lawlessness occurring on our border is not sustainable for any sovereign nation, let alone a Texas county comprised of 3,200 citizens. Make no mistake, the willful neglect of this administration's refusal to enforce the laws of our nation have compromised the safety and security of not only Texans, but every American. Texans should not have to bear the financial burden of securing the border while this administration actively undermines our efforts to protect our own citizens. However, we have a sacred duty to preserve those liberties we inherited from others who paid the ultimate price. Texans have never backed down from a fight, and we will not begin to do so now.

Thank you.

[The information follows:]

KINNEY COUNTY ATTORNEY
BRENT SMITH

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Kinney County has a population of only 3,200 residents, most of whom are farmers and ranchers. In the year 2020, the county reported 134 criminal charges for prosecution. This drastically changed in 2021 after President Biden issued multiple executive orders, revoking numerous border security policies that DHS was operating under to successfully secure our border. Shortly thereafter, criminal cartels seized control of our border and imposed their own policies that would allow their criminal enterprise to thrive.

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Kinney County normally operates within a $6 million-dollar annual budget; however, the open border policies enacted by the Biden administration has required the county to significantly expand the capacities of our local criminal justice system, costing Texas taxpayers an **additional** 10.5 million dollars ($10,532,441.47).

Perhaps however, the most significant cost that we have sustained during this border crisis is the loss of the safety and security we once enjoyed as Americans. In order to protect the safety of students attending public school from the threat posed by high-speed car chases with cartel smugglers, the school administration was forced to erect military style vehicle barricades around its campus. On at least one occasion, the smuggled occupants of a vehicle breached these barricades on foot and attempted to enter the school while the campus was on lock down.

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The violence and lawlessness occurring along the southern border is not sustainable for any sovereign nation, let alone a Texas county comprised of 3,200 citizens. Make no mistake, the willful neglect of this administration's refusal to enforce the laws of our nation has compromised the safety and security of not only Texans, but every American. Texans should not have to bear the financial burden of securing the border while this administration actively undermines our efforts to protect our own citizens. However, we have a sacred duty to preserve those liberties we inherited from others who paid the ultimate price. Texans have never backed down from a fight and we will not begin to do so now.

KINNEY COUNTY ATTORNEY
BRENT SMITH

Kinney County Border Security Expenditures

9/1/2021 – 8/31/2024

Budget Category	Total
Additional Criminal Justice System Personnel[1]	$3,930,326.76
Additional Criminal Justice System Equipment[2]	$1,535,751.66
Additional Supplies and Direct Operating Expenses[3]	$968,140.43
Additional Office Space Construction	$469,639.30
Contractual and Professional Services	$1,332,075.67
Operation Lone Star Tower Project	$2,282,892.59
Travel and Training	$13,615.06
TOTAL	**$10,532,441.47**

1. Assistant prosecutors, paralegals, court coordinators, interpreters, court reporters, visiting judges, sheriff deputies, sheriff clerks and county clerks.
2. Law enforcement equipment, vehicles, radios, drones, vests, license plate readers, body cameras, dash cameras, drawbridge cameras and ATVs.
3. Laptops, printers, scanners, Wi-Fi infrastructure, office supplies, software licenses and overtime pay.

Chairman ARRINGTON. I thank the gentleman from Texas, and now yield five minutes to Mr. Bier. I am sorry I mispronounced your name earlier. Bier flows, rolls off the tongue, as a Texan, a lot easier than Bier. So, it is Bier, right?

Mr. BIER. That is right. Thank you.

Chairman ARRINGTON. Okay, Mr. Bier, you have five minutes. Thank you.

STATEMENT OF DAVID BIER, DIRECTOR OF IMMIGRATION STUDIES, CATO INSTITUTE

Mr. BIER. Chairman Arrington, Ranking Member Boyle, and distinguished Members of the Committee, thank you for the opportunity to testify.

For nearly half a century, the Cato Institute has produced original research showing that free markets and individual liberty make the United States a wealthier, safer, and freer country. In a free society, markets incentivize people to contribute to the welfare of others. Thanks to freedom, America isn't a fixed pie. It is a growing one. It is exactly for these reasons that so many people from around the world come here, and for these same reasons, we should let them come legally.

America has never needed immigrant workers like it needs them now. Population growth is down 90 percent from its historic highs. America's nine million open jobs are costing the U.S. economy more than a half a trillion dollars in economic output per year, and we need immigrants to fill them. The U.S. prime age employment rate is already at near record highs, and more Americans are retiring than entering the job market. As a result, 100 percent of labor force growth is now coming from immigrants.

The Congressional Budget Office just found that the recent increase in immigration, almost entirely, unfortunately, from illegal immigration, will increase the size of the economy by $7 trillion, increase tax revenues by $1 trillion, and cut deficits by about a trillion over a decade. The National Academy of Sciences seminal 2017 report on the fiscal effects of immigration on Federal, State, and local finances found that immigrants reduce deficits both in the short and long term.

Last year, Cato published a 250-page update of that report and found that immigrants pay $1 trillion in taxes, $300 billion more than they receive in benefits. Even low-skilled immigrants who arrive early enough in their careers are fiscally positive in the long term. Studies that claim to find otherwise simply ignore most of the direct and indirect revenues that immigrants create.

Of course, every immigrant is not always and everywhere fiscally positive, but the big picture is clear. Immigrants are makers, not takers.

Congress should be exploring how to permit immigration in a lawful and orderly way to maximize these potential benefits. Unfortunately, America is benefiting from immigration in spite of Congress's dysfunctional legal immigration system, which was last updated in 1990. Backlogs and delays are now so extreme that literally in any other area of law, there would be daily hearings and investigations about them.

Just three percent of the applicants for legal permanent residence this year will be approved. Most of the people who are currently applying for legal permanent residence will die before they or their family members have the opportunity to immigrate legally.

Our legal immigration system is mostly ignored here, but its message that the way to come is to come illegally, is heard around the world. As long as we continue to proclaim this message, we will continue to incur some costs related to illegal entries. The only way to change the message is to change the law. That may be hard, but if we start with the accurate premise that these immigrants can be contributors, we can skip the contentious arguments over how to keep out everyone who is trying to come here and focus on the solvable issue of how they can come legally and contribute.

Free Border Patrol to keep out real threats. Let people not be forced to hand over their life savings to cartels. Let them line up transportation, housing, and jobs in advance of their arrival. Let them come legally, and if you don't want them to have any welfare benefits, I am fine with that.

Fixing immigration only requires faith in America, in our markets, in our constitution, in our freedom, and if you ever lack that faith, talk to those who are Americans by choice. Immigrants will tell you that they believe in America. We should listen.

Thank you.

[The information follows:]



Testimony of

David J. Bier

Director of Immigration Studies
Cato Institute

Before the

House Committee on the Budget

United States House of Representatives

May 8, 2024

RE: "The Cost of the Border Crisis"

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Chairman Arrington, Ranking Member Boyle, and distinguished members of the Committee, thank you for the opportunity to testify.

My name is David Bier. I am the Director of Immigration Studies at the Cato Institute, a nonpartisan public policy research organization in Washington, D.C. For nearly half a century, the Cato Institute has produced original research, showing that free markets and individual liberty make the United States a wealthier, safer, and freer country.

In a free society, markets incentivize people to contribute to the welfare of others through their work, innovation, and entrepreneurship. Thanks to freedom, America isn't a fixed pie—it's a growing pie. It is exactly for these reasons that so many people from around the world come to the United States, and it is exactly for those same reasons that we should let them come legally.

America has never needed immigration like it does now.

The United States desperately needs more workers at this moment in its history. Currently, the U.S. population is growing slower than at any point in its history. From 2020 to 2023, international migration was responsible for 73 percent of the meager 1 percent population growth during those three years.[1] Without immigration, the U.S. population will start to decline by the 2030s. Already, about 40 percent of the counties in the United States saw declining populations in 2023.[2]

People are necessary to maintain buildings, roads, schools, hospitals, and businesses because population decline erodes property values and forces business and school closures. This population death spiral has afflicted both urban and rural counties. In fact, over the last decade, rural America lost population for the first time in U.S. history.[3] By 2030, population aging or decline will reduce tax revenue per capita in nearly every state.[4]

The country has already seen how population decline will manifest in the future. Major cities saw significant outmigration in the 1960s and 1970s before they stabilized and rebounded in the 1990s and 2000s, in major part thanks to new immigrants.[5] The outmigration led to housing vacancies and job losses, which contributed to increased crime, and the subsequent in-migration went hand in hand with lower crime and more business creation.

Immigrants can save America from labor force decline.

Along with slower population growth, labor force growth in the United States has also declined for decades, falling by 65 percent from the levels observed in the 1960s—a period when the immigrant share of the U.S. population bottomed out—to the most recent decade.[6] This decline in labor force growth was even more pronounced among individuals without a college degree. These declines happened despite immigration. From 1995 to 2022, immigrants and their children accounted for 70 percent of labor force growth.[7]

There are jobs available for immigrants to fill. Currently, U.S. nonfarm employers have about 8.5 million open jobs. Every single month after January 2021 had more job openings

than any month before it, back to the start of the job openings data series in the year 2000.[8] Filling these open jobs could have increased U.S. Gross Domestic Product by over $2.5 trillion.[9] Going forward, these unfilled job openings will cost the U.S. economy over half a trillion dollars per year.

These jobs will not be filled without immigrants, as the U.S. prime age employment rate is at a near record high.[10] With more Americans retiring than entering the labor force, immigrants have accounted for 100 percent of U.S. labor force growth since December 2019.[11] Without immigrants, the working-age population will fall by about 6 million over the next two decades.[12]

We should not be concerned that immigrants will arrive and choose not to work either. Immigrants will work if the government allows them to. Despite numerous legal obstacles to finding jobs in the United States, immigrants are more likely to work than U.S.-born workers overall and at every education level—a difference that grows significantly among the least skilled. Immigrant adults without high school degrees are about 20 percentage points more likely to work than comparable U.S.-born adults. Furthermore, nearly 97 percent of immigrants who looked for jobs in 2022 found them.[13]

Immigrants improve the U.S. fiscal situation.

The Federal Reserve Board of Governors has projected that the decline in population growth will cause economic growth to fall across OECD countries, including the United States, consequently increasing the burden of the U.S. debt.[14] But immigrants can help improve economic growth and government finances. In 2016, the National Academy of Sciences (NAS) calculated the fiscal effects of immigration on the United States, finding that the net present value of immigration had an overwhelmingly positive impact on the U.S. economy in the long term.[15]

The NAS shared its model with the Cato Institute, and in 2023, Cato published an update of the NAS report that incorporated the latest data and research on immigration's fiscal effects. That report found that immigrants generate nearly $1 trillion (in 2024 dollars) in state, local, and federal taxes, which is almost $300 billion more than they receive in government benefits, including cash assistance, entitlements, and public education.[16]

In the long-term, the present value of all the taxes generated minus all the benefits received for an immigrant arriving at age 25 is positive across all education levels. The 30-year net present value for a 25-year-old immigrant without a high school degree is positive $203,000. This positive result occurs partly because immigrant workers cause companies to invest more in capital, which results in those companies paying far more in taxes than they would without those workers.[17]

Cato and NAS use a generational accounting model. Economists Mark Colas and Dominik Sachs use an entirely different method that accounts for the indirect fiscal effects of immigration but come to a conclusion similar to Cato's.[18] They find an indirect positive fiscal effect of about $750 per high school dropout immigrant. That $750 positive effect

often transforms immigrants who are high school dropouts into fiscal net-contributors in many scenarios. Colas and Sachs discover this indirect effect by using a general equilibrium model that they tailor to a labor market with heterogenous workers, which can capture the taxes paid on the indirect boost in economic output from immigration. No method is perfect and there are tradeoffs in each one, but it's striking how the NAS-Cato methods produce results directionally similar to the Colas and Sachs general equilibrium model.

The U.S. Department of Health and Human Services (HHS) has also published research on the fiscal effects of refugees and asylees. In 2017, it found that refugees and asylees had produced $63 billion more in taxes than they received in benefits from all levels of government over a decade.[19] In 2024, HHS found that over a 15-year period, refugees and asylees produced about $124 billion more in taxes than they received in benefits.[20] Another 2022 study found that the cut in the refugee program from 2017 to 2020 cost the U.S. economy $9 billion annually and a net of $2 billion to all levels of government.[21] These studies deal with shorter periods of time and smaller populations, but they find the same positive effects as other broader studies.

In February 2024, the Congressional Budget Office (CBO) found that the recent increase in immigration would increase U.S. gross domestic product by $7 trillion by 2034, raise an additional $1 trillion in revenues, and lower the deficit.[22]

This recent estimate complements CBO's 2013 findings that comprehensive immigration reform that provided a path to citizenship for illegal immigrants and increased legal immigration would cause "a net savings of about $175 billion over the 2014–2023 period" and "would decrease federal budget deficits by about $700 billion (or 0.2 percent of total output) over the 2024–2033 period."[23] The CBO stated that there would be about another $300 billion in savings from the indirect economic effects of more workers.

Unfortunately, this scoring was a rare exception to CBO's normal practice of not considering the increases in employment that occur when immigrants enter the labor force, leading to such anomalies as finding that immigrant PhDs will impose net costs on the federal government.[24]

Immigration boosts Social Security revenues.

Since the 1960s, the ratio of workers to retirees has plummeted, and the Social Security Trustees now estimate that Social Security will be short nearly 35 million workers to fund the system in the 2030s.[25] It will have to cut benefits by at least 23 percent in 2034, if not earlier, or raise taxes to cover the shortfall. The situation will not improve in the future, with benefit cuts reaching 30 percent and the shortfall in workers hitting 80 million by 2080.

According to the Social Security Administration Trustees 2022 report, increasing net immigration from 829,000 to nearly 1.7 million would reduce the annual burden of Social Security in 2097 by 1.51 percent of taxable payroll, which would be $137 billion in 2022.[26] This immigration range is based on what Social Security thinks might be possible given the

current law, and 1.7 million immigrants per year are not significant as a percentage of the U.S. population compared to the level of immigration in many other countries. If immigrants, their children, and their grandchildren added the necessary 80 million additional workers by 2080, the savings would amount to $455 billion per year in 2080.

The cumulative present value of securing enough workers to fund Social Security over the next 75 years is at least $24 trillion.[27] The Social Security Trustees have also estimated that in 2010, illegal immigrants paid into Social Security $12 billion more than they received in benefits.[28] Given the poor economic conditions in 2010, the amount today is likely double that amount. Of course, the underlying dynamics of Social Security need reforms regardless, but the Social Security worker shortfall highlights the magnitude of America's workforce issues.

Misleading studies produce erroneous estimates of immigrants' fiscal effects.

Some reports claim to find negative fiscal effects from immigration, but they do not use any of the methods of economists who study the fiscal effects of immigration. One study comes from the Federation of American Immigration Reform (FAIR), which purports to estimate the fiscal effects of "illegal immigrants."[29] FAIR's report makes too many methodological errors to list, but here are some of the most egregious:

1. FAIR's study significantly underestimates tax contributions of illegal immigrants: it underreports their state income tax revenues by 37 percent, understates their federal income taxes by at least 88 percent, and understates their Medicare and Social Security taxes by 62 percent, according to data from the Census Bureau's Current Population Survey.[30] The discrepancies in FAIR's estimates arise from erroneous assumptions about the educational attainment of illegal immigrants as well as inaccurate assumptions about actual tax payments.[31] FAIR's study also miscalculates taxes generated on property and sales taxes.[32]
2. FAIR counts expenditures on U.S. citizen children in their households but ignores the tax revenues paid by their adult U.S. citizen children. The Census Bureau doesn't designate someone as a child of an illegal immigrant, but the adult children of Latin American immigrants already pay about as much in taxes as illegal immigrants do.[33] This ignores well over $100 billion in revenues.
3. FAIR's analysis fails to account for tax incidence or taxes that are indirectly the result of the presence of immigrants and their children in the United States. For instance, it incorrectly assumes that illegal immigrants have zero effect on taxes on corporate income or capital income. Research has shown that ignoring the effects of immigrant workers on capital income by itself can lead to a negative result for low-skilled immigrants.[34] Similarly, FAIR fails to account for the positive effect of immigration on home values, which in turn increases property tax revenues.[35]

The likely reason that FAIR does not use the Census Bureau's data on noncitizen tax payments is that it does not want to use the Census Bureau's surveys to estimate the illegal immigrant population in the United States. Instead, FAIR invents its own number of illegal

immigrants (15.5 million), so it deliberately ignores the best available data on noncitizen tax payments and benefits use. Tbis approach significantly skews its fiscal impact calculations.

The FAIR report also significantly overstates the government benefits utilized by illegal immigrants and their families. It even bizarrely assigns 100 percent of the cost of immigration enforcement to immigrants in the United States. If Congress appropriated $1 trillion to stop all future illegal immigration, FAIR's model would assign this expenditure to immigrants already living in the United States. This methodology doesn't make any sense. It also does nothing to inform policymakers of the effects of legalizing the immigration of these people. FAIR's report is not a serious calculation of illegal immigration's fiscal effects.

Another report from the Center for Immigration Studies (CIS) finds similarly negative results for illegal immigrants.[36] CIS's main mistake is that it misallocates most of the cost of pure public goods, such as national defense and interest payments on existing debt, to new immigrants. Excluding public goods is appropriate because accepting an additional immigrant does not require additional spending on them. Correcting its methodology to exclude public goods reverses CIS's conclusion from a net present value cost to a net present value gain of about $900 billion in today's dollars.[37] Furthermore, CIS's estimate fails to account for the effect of immigrants on companies' capital income, which—as noted above—radically reduces the fiscal benefits of immigration.[38]

U.S. law thwarts legal immigration.

Unfortunately, the United States is benefiting from immigration despite its outdated and dysfunctional immigration system. Congress has not updated this system in over three decades. To briefly review the main permanent immigration options available for immigrants abroad:

1. **Refugee Program**: The global population of displaced people reached 114 million in 2023,[39] and the United States accepted barely 60,000 through its refugee program–a mere 0.05 percent.[40]
2. **Family-sponsored Immigration**: The capped family-sponsored system currently has a backlog of over 8.3 million,[41] and alarmingly, 1.6 million of these applicants currently waiting will likely be dead before they can receive a green card.[42]
3. **Employer-sponsored Immigration**: Annually capped at just 140,000 green cards, this category currently has a backlog of over 1.8 million.[43] The country-based caps mean that wait times for Indian workers with a master's degree will be longer than the average lifespan. Employer-sponsored green cards are close to impossible to obtain for those without very high wage offers and a work visa, and the main work visa—the H-1B—is capped at 25 percent of demand.[44] For those coming temporarily, the H-2B seasonal worker program for nonagricultural jobs is the only path for most U.S. seasonal low-skilled jobs, and it has an annual cap of 66,000. Although Congress temporarily doubled this cap, that level was only about half the level required to meet the number of positions requested.[45]

4. **Diversity Lottery**: The diversity green card lottery is available to immigrants only if they are *not* from legal immigrants' main origin countries and have a high school degree or experience in a skilled job, and it offers entrants just a 0.2 percent chance of receiving a green card.[46]

In 2023, about 34 million people entered a legal process to try to obtain a green card, yet barely more than 1 million will succeed and receive legal permanent residence—just 3 percent of applicants.[47]

This massive disparity between the number of green cards issued and those requested is a consequence of decades of unnecessarily low green card caps, leaving millions without a viable way to enter legally. From 1848 to 1914, the annual number of people receiving green cards hit one percent of the U.S. population 22 times. Since the Immigration Act of 1924, this rate has never been achieved again, and only once has it even hit half that rate, when Congress waived the caps on behalf of 3 million illegal immigrants in the Immigration Reform and Control Act of 1986. Today, one percent of the U.S. population would be nearly 3.4 million people,[48] yet the number of green cards issued in 2022 was just 1 million.[49]

Immigration policy is also restrictive compared to our peer nations. Less than 15 percent of the U.S. population was born outside the United States. This ranks 56th worldwide,[50] in the bottom third of wealthy countries. For perspective, to catch up to Canada (21.4 percent), nearly 30 million immigrants would have to arrive this year. To reach the immigrant share in Australia (30.3 percent), the number grows to 76.4 million. To hit Hong Kong's percentage (39.2 percent), it would have to exceed 140 million. These totals are unfathomable, but they illustrate just how much flexibility the United States has to adjust its immigration policy and remain well within the norms for the wealthy world.

Furthermore, the United States ranks 57th globally for refugees and asylum seekers per capita.[51] In contrast, other countries are taking in staggering numbers of refugees and asylum seekers: 3.8 million in Turkey, 3.4 million in Iran, 2.3 million in Germany, and 1 million in Poland, with a population about a tenth of the size of the United States. Seven percent of Jordan and 15 percent of Lebanon are now refugees or asylum seekers. These comparisons underscore the capacity for the United States to significantly expand its role in global refugee assistance and admission.

Legalize immigration to reduce costs associated with illegal immigration.

Although the fiscal effects of immigration are positive overall, Congress can increase the fiscal benefits of immigration by enabling more immigrants to enter the U.S. legally with the right to work and without the right to welfare benefits. Forcing immigrants to cross illegally creates unnecessary burdens on law enforcement and the public that could be resolved by letting immigrants enter legally with work authorization.

By forcing immigrants to immigrate illegally, the U.S. government is channeling tens of billions of dollars to criminals abroad who extort vulnerable migrants on their way to the United States. One estimate found that immigrants paid $13 billion in 2022 to criminals in

Mexico.[52] Immigrants are paying $4,000 to $20,000 to migrate. This means that they arrive in the United States with significantly fewer resources available to them than if they had been allowed to migrate legally.

Since the migration is illegal, Border Patrol incurs unnecessary costs arresting people who have no intention of evading detection or would happily apply for a visa if one was available to them. Immigrants also cannot line up jobs or housing in advance. They have no way of knowing if, when, or where Border Patrol will release them, leading to many people living on the streets in border communities even when they have somewhere to go. The prohibition on working legally after release is perhaps the most pernicious problem because it forces immigrants to break the law by working illegally or live off the charity of their neighbors.

Some cities have unnecessarily gone too far in providing services to this population. This policy choice has important budgetary consequences for those cities but does not change the big picture of the fiscal effects of immigration nationwide. New York, Chicago, Denver, Boston, and D.C. have collectively spent less than $10 billion on services for immigrants in 2023 and 2024, which amounts to about 0.1 percent of total state and local government spending nationwide over two years.[53] Shelter residents in these cities account for less than 1 percent of all immigrant arrivals since 2021.

But these cities do not need to provide these services,[54] and other cities have eliminated services without ill consequences.[55] Regardless, the mayors in these cities are not calling for cutting off immigration, but rather authorizing these immigrants to work so that they can support themselves.[56] To address this issue, Congress should require that anyone released or otherwise permitted to enter the United States be immediately allowed to work legally.

Conclusion

Congress should be exploring how to permit immigration in a lawful and orderly way that maximizes the potential benefits of immigrants. Unfortunately, America is benefiting from immigration *in spite of* Congress's dysfunctional permanent legal immigration system—which was last updated in 1990. Current backlogs and delays are now so extreme that in literally any other area of law there would be daily hearings and investigations about them.[57]

Our legal immigration system is largely ignored here, but its inefficiencies send a global message that the way to come is to come illegally. As long as we continue to proclaim this message, we will continue to eat the unnecessary costs of illegal immigration. The only way to change the message is to change the law. But if we start with the accurate premise that immigrants can be contributors to our society, we can focus on how they can reach that potential without resorting to illegality and chaos.

Let us create a system where people aren't forced to hand over their life savings to cartels. Let them line up transportation, housing, and jobs in advance of their arrival. Let's allow

Border Patrol to focus on genuine threats. Let them come legally. Fixing the system only requires faith in America, in our system, in our Constitution, in our freedom. And if you ever lack faith, talk with those who are Americans by choice. They will tell you that they believe in us. We should listen. Thank you.

Citations

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Chairman ARRINGTON. Mr. Bier, thank you for your comments. We are going to move to the Q and A portion and I am going to yield five minutes to start us off, and I just want to respond to some of your comments because I believe in free people, free markets, and free and sovereign states.

Freedom without security is complete anarchy. Freedom without rule of law is chaos, and so, there are things we can do, and I agree with you, there are places that are broken that should be fixed within the immigration framework in our laws, and there is no doubt there are ways to do that, even on a bipartisan basis.

But when the President of the United States on his first day repeals and rescinds remain in Mexico and interior enforcement and holding sanctuary cities accountable for enabling illegal immigration, when that happens on day one, and then 93 other executive actions within the first hundred days to unravel the programs that were effective in reducing illegal immigration and effectively securing our border, that looks like a willful and intentional act to create chaos.

So, yes, there are ways to fix the current system, but I can't accept the fact that the President of the United States, through this Section 212(f), which is the broadest of authorities I know of, it says, if you, Mr. President, think this is in the interest of the United States to turn anyone around for any reason, you can do that.

Mr. BIER. Can I ask, where do we go from here?

Chairman ARRINGTON. Well, where we go——

Mr. BIER. If not reform the system, where do we go from here?

Chairman ARRINGTON. Where we start is to do that which we can with the authority and tools we have, and we saw very clearly, very clearly in the last administration, where there is a will, there is a way. Doesn't mean it is perfect, doesn't mean there aren't things to fix, but you can't have, in the last month of the Trump Administration, 1,000 a day, and then this last December, 10,000 a day of people coming across illegally.

To your point, if people think they can come illegally, they will come. Just this week, President Biden and the administration rolled out a rule to give $9 billion worth of health care to people here illegally.

You get what you reward. You are an expert on free markets. Incentives drive behavior. We are putting incentives out there intentionally that are creating this, and there is a cost to society, especially—and more so than the financial cost,—all of the folks on the terrorist watch list, all of the drugs, all of the crime and criminals, we are not vetting this, it is pouring into our communities, and it is devastating. We need freedom, but we need rule of law alongside of it, or we lose the peace and tranquility we promise in the Constitution.

Mr. BIER. Well, we can have both, right? We can have both. We don't have to choose between security and a legal immigration system that works.

Chairman ARRINGTON. This——

Mr. BIER. We don't have to choose.

Chairman ARRINGTON. You are right.

Mr. BIER. They are compatible. In fact, they complement each other.

Chairman ARRINGTON. They do.

Mr. BIER. We have a legal immigration system that works and there is going to be fewer people crossing. So, Border Patrol is freed up——

Chairman ARRINGTON. Do you think the President——

Mr. BIER [continuing]. To interdict the people.

Chairman ARRINGTON. Do you think the President is doing everything he can to create order and law at the border? And do you think he is doing everything within his power to make sure we have seamlessness at the border with respect to immigration? Do you think——

Mr. BIER. I——

Chairman ARRINGTON [continuing]. He is doing everything he can?

Mr. BIER. I mean, all I can say is he has deported a lot of people, far more people, even as a percentage of the people who arrived, he deported more——

Chairman ARRINGTON. That is absurd.

Mr. BIER [continuing]. In his first two years than the other administration did in its last two years.

Chairman ARRINGTON. Let me move on. Let me move on.

Mr. BIER. So, it has deported a lot of people.

Chairman ARRINGTON. Yeah.

Mr. BIER. I don't think that is the answer. We got to get back to——

Chairman ARRINGTON. I think it is——

Mr. BIER [continuing]. The legal immigration system——

Chairman ARRINGTON. For me, it is——

Mr. BIER [continuing]. Is the problem.

Chairman ARRINGTON [continuing]. Intellectually dishonest, to me, to sidestep a very simple question. Is this President doing everything he can with the tools that he has, recognizing there are things that we need to do?

Mr. BIER. There are other values at stake.

Chairman ARRINGTON. I think the answer——

Mr. BIER. There are other values at stake. He could separate——

Chairman ARRINGTON. I think the answer is no.

Mr. BIER [continuing]. Children like the last administration did.

Chairman ARRINGTON. No.

Mr. BIER. Yes, he could do that. He shouldn't do that.

Chairman ARRINGTON. Mr. Smith——

Mr. BIER. There are lines that you should respect.

Chairman ARRINGTON. Mr. Smith, a deluge of crime coming across the border—well, you know what, Mr. Blair, you were a Border Patrol officer. Is this just a natural ebb and flow like my Ranking Member suggested? Just a surge? A seasonal surge? Or is it—let me——

Mr. BOYLE. Just to clarify, this point I made.

Chairman ARRINGTON. Okay.

Mr. BOYLE. I didn't say seasonal surge. I mean, this is obviously beyond a season. I mean, we have a unique problem of three countries that have tremendous problems, the triangle countries in Cen-

tral America that are causing a large part of this, but what I did say is this started a couple decades ago. This has not just started the last couple of years.

Chairman ARRINGTON. Okay, let me take off then on that, and I don't want to mischaracterize you. Is this something that has been going on for—when I say this, and this is my last question, what we are experiencing now with the record flow of migrants, the record flow of drugs, record migrant deaths, record people on terrorist watchlists, is that something that has been going on, as the Ranking Member suggests, for a decade or so? Or is this a recent phenomenon as a result of this administration's either policies, lack of leadership, et cetera, willful or not? Where is the—is this a longer tale? Or is this something as a consequence of the current administration's policy?

Mr. BLAIR. Sure. To give you an example, let's look at the Venezuelan issue. So, Venezuelans, in 2017, we had roughly 2,600 encounters, and then fast forward to 2023, we had 334,000 encounters. Now, you look at that. About eight million people have fled Venezuela because of Hugo Chavez before, and then also Maduro. Right? And so, at first, they were starting to go to South American countries, but it wasn't until the current administration's policies and procedures that allowed this to actually happen, and that invited all the foreign nationals from South America, regardless of what country of origin, to our southern border.

So, you can see the numbers or the data right there to show that this is not a natural occurrence. This is all by design, and it has all been done through policies, through this administration.

Chairman ARRINGTON. I thank the gentleman, and now yield five minutes to my Ranking Member, Mr. Boyle.

Mr. BOYLE. Well, thank you, Mr. Chairman, and I want to turn to the witness from the Cato Institute. I would point out Mr. Bier, now FAIR, F-A-I-R, the acronym, published a report on the alleged burden of migration to the U.S. Mr. Bier, you have over a decade of impressive experience in immigration studies. Your work has been cited widely, including by the U.S. Supreme Court. You have displayed your knowledge already here this morning. So, with your background and knowledge and experience, I would like you to take this opportunity to comment on the FAIR report, their use of data in the report, and how the methodology of the report may fail to capture the broader context of immigration's economic benefit to the country.

Mr. BIER. Yeah. So, the FAIR report significantly understates the tax benefits, expenditures, contributions of immigrants. I mean, you look at the state tax revenues that they calculate, it is 37 percent below what is in the census. Current population survey data understates their federal income tax by about 88 percent; understates their Medicare and Social Security taxes by 62 percent. The discrepancies are so enormous, you are left with the impression that they are just inventing them, just like they invent the number of illegal immigrants in their study. They say they are 15.5 million. They just invented that number and then, so they can't use any of the available census data.

FAIR counts the expenditures on education for U.S. born children, for example, minor children, excludes all of the tax payments

from the adult children of immigrants in the United States. Doing that alone cuts the total number of tax payments in half, which they have already reduced by about two thirds.

And they, FAIR, they completely ignore tax incidents or taxes that are indirectly the result of immigrants. So, they have zero tax incidents for corporate taxes that are paid by corporations who hire these workers. They have zero capital income taxes that they attribute to immigrants working in the United States. Research has shown that those changes just by themselves can turn a low-skilled immigrant from dramatically negative to fiscally positive if they arrive early enough in their career.

Mr. BOYLE. Well, thank you, and building off of that, I would point out something directly relevant to this Committee, the Budget Committee. We had an important set of economic data or report released on Monday from the Trustees of Social Security and Medicare trust funds, and we got tremendously good news. Because of this economy performing much better than was projected a year ago or a couple of years ago, the lifetime of the trust funds for Social Security and Medicare have been pushed out. That is good news that we all should cheer.

I was wondering, given this is a hearing on immigration, what impact does immigration and immigrants have on Social Security and Medicare Trust Funds?

Mr. BIER. Well, the Social Security Trust Fund report directly says it. It is a result of increased labor force, and the increased labor force results in more tax revenue to Social Security. The report says that basically increasing from 829,000 to 1.7 million immigrants per year reduces the annual burden of Social Security by 1.5 percent of taxable payroll, over, by 2097, which is about $137 billion in today's term. So, very significant impact on Social Security revenues in the long term.

Mr. BOYLE. Then finally, I wasn't planning on asking this, but since we had a good back and forth and you had a good back and forth with the Chairman, and I am going off memory here, so please correct me if I am wrong, but my memory of this becoming a really, I mean, of course, immigration has always been a hot-button issue at different peaks in American history. The race riots, the anti-Catholic Know-Nothing riots of the 1840s happened in my district. They were so deadly, they actually, that is what led to the creation of the Philadelphia Police Department because of just how widespread and deadly they were. So, this has been an ongoing story throughout American history.

But I really remember in my lifetime the question on the southern border rising to a certain prominence right around 2005. That was when George W. Bush——

Mr. BIER. Mm-hmm.

Mr. BOYLE [continuing]. Was working with John McCain and Senator Kennedy. You had a surge in crossings then. You have had different drops, but increases, and then obviously, we have an enormous challenge now. So, if you could just walk me through——

Mr. BIER. Sure.

Mr. BOYLE [continuing]. Kind of the last 20 years.

Mr. BIER. Yeah.

Mr. BOYLE. Is my recollection of this correct?

Mr. BIER. Yeah.

Mr. BOYLE. I mean, this has been a multi-decade issue——

Mr. BIER. Yeah.

Mr. BOYLE [continuing]. That unfortunately does continue to get worse.

Mr. BIER. Look, the big difference between then and now is who is arriving. So, Mexicans——

Mr. BOYLE. Yeah.

Mr. BIER [continuing]. Were arriving. You had about two million crossings in the border in the year 2000, but half of the people made it through. They made it across the border. This is according to estimates by the Department of Homeland Security. So, the big difference now is more people turn themselves in. They are from countries that are very difficult to deport to, Cuba, Haiti, Nicaragua, et cetera. Even the Northern Triangle countries are far more difficult to deport to than Mexico. So, you had far more evasions——

Mr. BOYLE. Yeah.

Mr. BIER [continuing]. In the early 2000s. Now you have more people seeking asylum, but the magnitude is nothing new to Border Patrol. We actually had more overwhelmed Border Patrol agents in the 2000s when you had the number of arrests exceeding three per day per Border Patrol agent, which is, I mean——

Mr. BOYLE. Right.

Mr. BIER [continuing]. Totally unheard of today with 20,000 agents.

Mr. BOYLE. Thank you.

Chairman ARRINGTON. Thank you——

Mr. BOYLE. I yield back.

Chairman ARRINGTON. I thank the Ranking Member. I now yield to Mr. McClintock from California for five minutes.

Mr. MCCLINTOCK. Thank you, and Mr. Chairman, I need to begin by noting the Democrats habit of discussing legal and illegal immigrants as if they were the same. That is a supreme insult to the millions of legal immigrants who enter our country every year by obeying our laws. Legal immigrants come here pledged to pull their weight, not to be a burden on others, to obey our laws, and to love and defend our country.

Illegal immigrants come here under very different circumstances. Their first act is to commit a Federal crime by illegally entering our country. Their second act is to demand free food, shelter, medical care, clothing, education, transportation, and legal services. I have watched them at the border taunting our Border Patrol as they illegally cross into our country. To equate their lawless behavior with law abiding, hardworking, and patriotic legal immigrants is outrageous, and my colleagues who do so should be ashamed of themselves.

The Senate bill we heard the Ranking Member tout would make it impossible for a future President to use his existing authority to secure the border, as Trump did, until illegal crossings exceed 4,000 a day, and as Border Patrol agents tell us, the problem is not lack of laws. It is a deliberate decision by the Democrats not to enforce those laws. Now, the Democrats tell us, well, this is great for the economy, since the more people in the economy, the larger it

is. Well, duh, but as the CBO Director testified to this Committee earlier this year, the economic impact on working Americans is catastrophic because it suppresses wages for unskilled and low-skilled American workers, and it breeds an underground economy that further suppresses the competitiveness of American workers. So, working Americans see their wages stagnate as a result, and many are forced out of the labor market entirely.

Ms. Kirchner, how do we help working Americans by flooding the labor market with cheap, illegal labor?

Ms. KIRCHNER. We don't help them at all, and actually, if we wanted to be kind to the previous generations of immigrants, we would not flood the market with cheap labor. There is ample evidence that it depresses wages.

Mr. MCCLINTOCK. And the CBO Director actually confirmed that right here before this Committee. You estimated the net cost to U.S. taxpayers to be $150 billion to support these illegals after deducting what little tax they pay. That includes $70 billion in costs to our schools, does it not?

Ms. KIRCHNER. Yes, sir.

Mr. MCCLINTOCK. And $22 billion for medical care?

Ms. KIRCHNER. Yes, sir.

Mr. MCCLINTOCK. What do you think the Democrats would say if Republicans proposed cutting $70 billion out of our schools and $22 billion out of our hospitals? And yet, isn't that exactly what they are doing?

Ms. KIRCHNER. Well, I wouldn't propose to put words in anyone's mouth, but I do think that illegal immigration has consequences, and we need to accept that as a nation, and we need to make good policy decisions, and that means understanding the real impact of what is going on and the costs that are associated, not just the economic benefits, as you said, of growing the greater economic pie, GDP, measuring alone.

Mr. MCCLINTOCK. By the way——

Ms. KIRCHNER. And everything is made up of choices. And if you look——

Mr. MCCLINTOCK. And your estimate of cost is just direct cost to the government. It is not the cost of crimes committed by illegals.

Ms. KIRCHNER. Exactly.

Mr. MCCLINTOCK. It is not the cost of wage reductions for working Americans.

Ms. KIRCHNER. Exactly.

Mr. MCCLINTOCK. It is strictly direct cost.

Ms. KIRCHNER. It is a snapshot of payments——

Mr. MCCLINTOCK. Well——

Ms. KIRCHNER [continuing]. And revenues.

Mr. MCCLINTOCK [continuing]. The Democrats tell us that illegal immigrants are more law abiding than Americans. Mr. Smith, are the illegals entering your county more law abiding than your legal residents?

Mr. SMITH. Well, I can tell you from the numbers that I quoted earlier, of those thousands of cases, we have about 50 county residents being prosecuted. The remaining is the result of an open border, and I would just add that, you know, there is a difference——

Mr. MCCLINTOCK. I have got to go on. Ms. Kirchner, did you not look at the scape request made by states for the cost of incarcerating illegals and conclude that illegals are 231 percent more likely to be jailed for crimes in California, 440 percent more likely in New Jersey, and 60 percent more likely in Texas?

Ms. KIRCHNER. I have not looked at the recent data, but I know, and certainly in California, it is very high.

Mr. MCCLINTOCK. In fact, in some cases, in some states like California, they make it illegal to report immigration status of suspects. So, using Cato's methodology, illegal aliens never commit a crime in California?

Ms. KIRCHNER. Yes, that is a problem, sir, and we do know the truth. We know, and even, you know, what is interesting is even the Biden Administration recently has been coming out and saying, please, sanctuary cities, please honor our detainers. We don't want to deport many people, but the people we want to deport are very bad.

Mr. MCCLINTOCK. I'm just going to finish by saying that opposition to illegal immigration is not opposition to legal immigration. In fact, the people I find who are the angriest about illegal immigration are the legal immigrants who have played by the rules, waited patiently in line, and are now watching millions of illegal migrants cut in line in front of them.

Ms. KIRCHNER. Absolutely.

Mr. MCCLINTOCK. If we are going to encourage and reward illegal immigration, which is the clear and consistent policy of the Democrats today, then there is no point in legal immigration. I yield back.

Chairman ARRINGTON. The gentleman's time has expired, and we now yield five minutes to the gentlelady from Illinois, Ms. Schakowsky.

Mr. SCHAKOWSKY. Thank you, Mr. Chairman. I appreciate in this Committee that there is actually some back and forth, even at the start, and I want to say as a first generation American myself, that I am very anxious to see and to talk most directly about the positive aspect of immigration to this country. We have heard about all the projections of the, was it $7 trillion to our economy from immigrants and another trillion, you know, that we are going to benefit or billions that we are going to—oh, $1 trillion over a decade in money going into our own budget.

But here is the thing that I am really struggling with. In Chicago, we had a roundtable from employers and then immigrants who want to work. Employers are desperate for workers right now. We want to increase those numbers, and yet when you talk to the immigrants and the migrants, and I have to many, I say, what is it that you want from the United States? The number one answer is a job, I want to work. The fact that we could boost our economy if we had a better immigration process, a system, we could do this as a Congress of the United States to make a much more sensible one.

And I have to say to you, Mr. Blair, you are talking about what goes on in Texas. I have to tell you, there are busloads of people being put into cars and into trucks to come to my city. These are people who are desperate. They have come across this border and

made it because they want a better life, and you know what happens to them? They don't even know where they are being sent to, and they are dropped off in places they have never heard of. We lost a child on one of those trips. Often no water given to them on the way from Texas to Chicago.

Who are we as a country right now, when these are people who are coming here with every intention to do, to make this country better, to have a safer place. These are human beings and are not really treated that way by the governor that you are touting right now for all the great work and the trauma.

And, you know, when we talk about the chaos, I think there are people, including Donald Trump, who want the chaos to continue, and what he has said, and I quote, that what immigrants do is "poison the blood of our country." How awful. I am sorry.

I do want to talk to you, Mr. Bier, and if whatever time is remaining, and we seem to be flexible in time around here, to respond to the positive of what immigrants can do, and if we don't have them, and I want to ask you, what if we had a mass deportation, or if we were to stop immigration in the United States, which some recommend, especially so called illegal undocumented people, what would happen to our economy?

Mr. BIER. Well, it would be a massive contraction in our economy. We would lose, over the next decade, about one percent of our GDP would go away from just mass deportation of the longtime illegal immigrant residents. Not even talking about the ones who have come recently who are applying for asylum. So, massive contraction in the economy, huge blow to employers, a huge exodus of foreign direct investment into our economy, because people aren't going to invest in an economy that has a shrinking workforce. If you don't have workers here, you are not going to be able to build factories here. You are not going to be able to have farms here, and so, you are going to see investment go offshore. You are going to see jobs go offshore.

Ms. SCHAKOWSKY. Let me just ask, did employment help prevent the economy going down in the United States?

Mr. BIER. Yes, absolutely. Without the immigrants that we have had, we would have had a decline in our labor force since December of 2020 or, sorry, December of 2019. So, yeah, immigrants are the reason why gross domestic product and the number of jobs has been increasing so significantly, and the CBO report goes into great detail on that.

Chairman ARRINGTON. The gentlelady's time has expired, and we will now give five minutes to the gentleman from Wisconsin, Mr. Glenn Grothman.

Mr. GROTHMAN. Thank you much. First of all, I would like to make a unanimous consent request to submit the Centers for Medicare and Medicaid Services' final rule for CMS released today that will lead to 100,000 new enrollees under the Affordable Care Act at a cost of $7 billion.

Chairman ARRINGTON. Without objection, so ordered.

[The information follows:]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 435, 457, and 600

Office of the Secretary

45 CFR Parts 152 and 155

[CMS–9894–F]

RIN 0938–AV23

Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, and a Basic Health Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule makes several clarifications and updates the definitions currently used to determine whether a consumer is eligible to enroll in a Qualified Health Plan (QHP) through an Exchange; a Basic Health Program (BHP), in States that elect to operate a BHP; and for Medicaid and Children's Health Insurance Programs (CHIPs). Specifically, Deferred Action for Childhood Arrivals (DACA) recipients and certain other noncitizens will be included in the definitions of "lawfully present" that are used to determine eligibility to enroll in a QHP through an Exchange, for Advance Payments of the Premium Tax Credit (APTC) and Cost-Sharing Reductions (CSRs), or for a BHP.

DATES: These regulations are effective on November 1, 2024.

FOR FURTHER INFORMATION CONTACT: Morgan Gruenewald, (301) 492–5141, Danielle Ojeda, (301) 492–4418, or Anna Lorsbach, (301) 492–4424, for matters related to Exchanges.

Sarah Lichtman Spector, (410) 786–3031, or Annie Hollis, (410) 786–7095, for matters related to Medicaid, CHIP, and BHP.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (ACA) [1] generally [2] requires that to enroll in a Qualified Health Plan (QHP) through an Exchange, an individual must be either a citizen or national of the United States or be "lawfully present" in the United States.[3] The ACA also generally requires that individuals be "lawfully present" to be eligible for insurance affordability programs for their Exchange coverage such as premium tax credits (PTC),[4] advance payments of the premium tax credit (APTC),[5] and cost-sharing reductions (CSRs).[6] Additionally, enrollees in a Basic Health Program (BHP) are required to meet the same citizenship and immigration requirements as QHP enrollees.[7] Further, the ACA required that individuals be "lawfully present" to qualify for the Pre-Existing Condition Insurance Plan Program (PCIP), which expired in 2014.[8] The ACA does not define "lawfully present" beyond specifying that an individual is only considered lawfully present if they are reasonably expected to be lawfully present for the period of their enrollment.[9] The ACA requires an Exchange to verify that Exchange applicants are lawfully present in the United States.[10]

Consistent with our statutory authority under the ACA and to facilitate the operation of its programs, CMS issued regulations in 2010 to define "lawfully present" for the purposes of determining eligibility for PCIP (75 FR 45013); in 2012 for purposes of determining eligibility to enroll in a QHP through an Exchange by cross-referencing the existing PCIP definition (77 FR 18309); and in 2014 to cross-reference the existing definition for purposes of determining eligibility to enroll in a BHP (79 FR 14111). In the proposed rule (88 FR 25313), we proposed to amend these three regulations to update the definition of "lawfully present" currently at 45 CFR 152.2, which is used to determine whether a consumer is eligible to enroll in a QHP through an Exchange and for a BHP.[11] Exchange regulations apply this definition to the eligibility standards for APTC and CSRs by requiring an applicant to be eligible to enroll through an Exchange in a QHP to be eligible for APTC and CSRs.[12] Accordingly, in the proposed rule, when we referred to the regulatory definition of "lawfully present" used to determine whether a consumer is eligible to enroll in a QHP through an Exchange, we were also referring to the regulatory definition used to determine whether a consumer is eligible for APTC and CSRs.

In the proposed rule, we proposed a similar definition of "lawfully present" applicable to eligibility for Medicaid and the Children's Health Insurance Program (CHIP) in States that elect to cover "lawfully residing" pregnant women and children under section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (hereinafter "CHIPRA 214 option"), codified at section 1903(v)(4) of the Social Security Act (the Act) for Medicaid (42 U.S.C. 1396b(v)(4)) and section 2107(e)(1)(O) of the Act (42 U.S.C. 1397gg(e)(1)(O)) for CHIP. In July 2010, CMS interpreted "lawfully residing" to mean individuals who are "lawfully present" in the United States and who are residents of the State in

[1] The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this rulemaking, the two statutes are referred to collectively as the "Patient Protection and Affordable Care Act", "Affordable Care Act", or "ACA."

[2] States may pursue a waiver under section 1332 of the ACA that could waive the "lawfully present" framework in section 1312(f)(3) of the ACA. See 42 U.S.C. 18052(a)(2)(B). There is currently one State (Washington) with an approved section 1332 waiver that includes a waiver of the "lawfully present" framework to the extent necessary to permit all State residents, regardless of immigration status, to enroll in a QHP and Qualified Dental Plan (QDP) through the State's Exchange, as well as to apply for State subsidies to defray the costs of enrolling in such coverage. Consumers who are newly eligible for Exchange coverage under the waiver remain ineligible for PTC for their Exchange coverage. While neither Colorado nor New York requested a waiver of the "lawfully present" framework, both States are permitted to use pass-through funding based on Federal savings from their 1332 waivers to support programs covering immigrants who are ineligible for PTC. Colorado provides premium and cost-sharing subsidies to individuals earning up to 300 percent of the Federal poverty level (FPL) who are otherwise ineligible for Federal premium subsidies, including undocumented individuals. Under New York's section 1332 waiver, some immigrants with household incomes up to 200 percent of FPL, including DACA recipients, will be eligible for coverage under the State's Essential Plan (EP) Expansion plan. Beginning August 1, 2024 DACA recipients with incomes up to 250 percent of FPL will also be eligible for coverage under the State's EP Expansion. For more information on the Colorado, Washington, and New York section 1332 waivers, see *https://www.cms.gov/marketplace/states/section-1332-state-innovation-waivers.*

[3] 42 U.S.C. 18032(f)(3).

[4] 26 U.S.C. 36B(e)(2).

[5] 42 U.S.C. 18082(d).

[6] 42 U.S.C. 18071(e).

[7] 42 U.S.C. 18051(e).

[8] 42 U.S.C. 18001(d)(1).

[9] 42 U.S.C. 18032(f)(3), 42 U.S.C. 18071(e)(2).

[10] 42 U.S.C. 18081(c)(2)(B).

[11] 42 CFR. § 600.5.

[12] 45 CFR 155.305(f)(1)(ii)(A) and (g)(1)(i)(A).

which they are applying under the State's Medicaid or CHIP residency rules.[13] The definitions of "lawfully present" and "lawfully residing" used for Medicaid and CHIP are set forth in a 2010 State Health Official (SHO) letter (SHO #10–006, hereinafter "2010 SHO") and further clarified in a 2012 SHO letter (SHO #12–002, hereinafter "2012 SHO").[14]

We proposed several modifications to the definition of "lawfully present" currently articulated at 45 CFR 152.2 and described in the SHO letters for Medicaid and CHIP. First, we proposed to remove an exception that excludes Deferred Action for Childhood Arrivals (DACA) recipients from the definitions of "lawfully present" used to determine eligibility to enroll in a QHP through an Exchange, a BHP, or Medicaid and CHIP under the CHIPRA 214 option. We noted in the proposed rule that if this proposal were finalized, DACA recipients would be considered lawfully present for purposes of eligibility for these insurance affordability programs[15] based on a grant of deferred action, just like other similarly situated noncitizens who are granted deferred action. We also proposed to incorporate additional technical changes into the proposed "lawfully present" definition at 45 CFR 152.2, as well as to the proposed "lawfully present" definition at 42 CFR 435.4.

We received a large volume of comments, many in favor, and some opposed to a definition of "lawfully present" that includes DACA recipients. We are not finalizing a "lawfully present" definition for Medicaid and CHIP at this time. Rather, we are taking more time to evaluate and carefully consider the comments regarding our proposal with respect to Medicaid and CHIP, and specifically, to continue evaluating the potential impact of our proposed definition of "lawfully present" on State Medicaid and CHIP agencies. We received comments noting the many urgent and competing demands on State resources, raising concerns that finalizing the proposal for Medicaid and CHIP would add to that burden and divert resources dedicated to other matters. For example, State Medicaid and CHIP agencies continue to experience a significant workload to "unwind" (that is, to return to regular eligibility renewal operations) following the expiration of the continuous enrollment condition in section 6008(b)(3) of the Families First Coronavirus Response Act (FFCRA) on March 31, 2023.[16] During unwinding, States must, over time, process renewals, consistent with Federal requirements, for all individuals who were enrolled in their Medicaid program as of March 31, 2023. States must disenroll individuals who are no longer eligible for Medicaid, determine their potential eligibility for other insurance affordability programs, and as appropriate, transfer the individual's account to the other insurance affordability programs.[17] We recognize, in addition to the concerns raised by the commenters, that States are dedicating significant additional resources to implement new statutory requirements, including mandatory 12-month continuous eligibility periods for children younger than 19 years old in Medicaid and CHIP in effect as of January 1, 2024 under the Consolidated Appropriations Act (CAA), 2023,[18] new requirements for State Medicaid and CHIP programs related to justice-involved individuals under CAA, 2023,[19] and several new requirements for State Medicaid and CHIP agencies regarding benefits, data collection, and eligibility under the Consolidated Appropriations Act, 2024 (CAA, 2024).[20] Many States are implementing various systems modernization initiatives to address lessons learned from unwinding, and States may also need to make system changes necessary to comply with the statutory changes described above. Given the significant comments that CMS continues to consider, including comments regarding these competing State Medicaid and CHIP priorities, increased workload, and finite resources, we are not finalizing definitions for "lawfully present" and "lawfully residing" for Medicaid and CHIP in this rule at this time. The rulemaking process with regard to that portion of the proposal is ongoing.

As a result, the definition of "lawfully present" used in determining eligibility for Medicaid and CHIP under the CHIPRA 214 option, the current policy, based on the 2010 SHO and the 2012 SHO, continues to apply. Individuals, including DACA recipients, who are not considered "lawfully present" under the 2010 and 2012 SHOs for purposes of Medicaid and CHIP under the CHIPRA 214 option, will remain ineligible under that specific Medicaid and CHIP State option. DACA recipients, however, may continue to be eligible for limited Medicaid coverage for the treatment of an emergency medical condition consistent with 8 U.S.C. 1611(b)(1)(A) and the regulation at 42 CFR 435.406(b). Because we are continuing to evaluate and consider public comments and State burdens in connection with our proposal for Medicaid and CHIP for DACA recipients, the discussion on the definition of "lawfully present" in this final rule will focus exclusively on eligibility for enrollment through the Exchanges and BHP.

The definitions finalized in this rule are solely for the purpose of determining eligibility for specific Department of Health and Human Services (HHS) health programs and are not intended to define lawful presence for purposes of any other law or program. This rule does not provide any

[13] Centers for Medicare & Medicaid Services. (2010). *SHO #10–006: Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women.* Available at: *https://downloads.cms.gov/cmsgov/archived-downloads/smdl/downloads/sho10006.pdf.*

[14] SHO #10–006, see footnote 13; Centers for Medicare & Medicaid Services. State Health Official letters *(SHO) #12–002: Individuals with Deferred Action for Childhood Arrivals* (issued August 28, 2012). Available at *https://www.medicaid.gov/federal-policy-guidance/downloads/sho-12-002.pdf.*

[15] See the definition of "insurance affordability program" at 45 CFR 155.300(a) and 42 CFR 435.4.

[16] See Centers for Medicare & Medicaid Services (CMS), State Health Official letter (SHO)# 23–002, "Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023," January 27, 2023, available at *https://www.medicaid.gov/media/149291;* additional guidance for State Medicaid and CHIP agencies is available at *https://www.medicaid.gov/unwinding.*

[17] CMS, SHO# 22–001, "Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID–19 Public Health Emergency," March 3, 2022, available at *https://www.medicaid.gov/media/135211.*

[18] Title V, Subtitle B, Section 5112 of the Consolidated Appropriations Act, 2023 (CAA, 2023) amended titles XIX and XXI of the Act to require that States provide 12 months of continuous eligibility for children under the age of 19 in Medicaid and CHIP effective January 1, 2024. *See also,* CMS,*SHO #23–004: Section 5112 Requirement for all States to Provide Continuous Eligibility to Children in Medicaid and CHIP under the Consolidated Appropriations Act, 2023* (issued September 29, 2023). Available at: *https://www.medicaid.gov/media/163771.*

[19] Under Division FF, Title V, Section 5121 of the Consolidated Appropriations Act, 2023, starting January 1, 2025, State Medicaid and CHIP programs are required to have a plan in place and, in accordance with such plan, provide certain services to eligible juveniles within 30 days of their scheduled date of release from a public institution following adjudication, and CHIP programs are required to suspend, rather than terminate, CHIP coverage.

[20] Division G, Title I, Subtitle B of the Consolidated Appropriations Act (CAA), 2024 requires that State Medicaid agencies provide certain services for beneficiaries; that Medicaid and CHIP agencies engage in certain data collection and monitoring activities; and that Medicaid and CHIP agencies must no longer terminate eligibility for incarcerated adults, including targeted low-income pregnant individuals, and must instead suspend eligibility in Medicaid. States may also suspend eligibility in CHIP.

noncitizen relief or protection from removal or convey any immigration status or other authority for a noncitizen to remain in the United States under existing immigration laws or to become eligible for any immigration benefit available under the U.S. Department of Homeland Security (DHS)'s or Department of Justice (DOJ)'s purview.

II. Summary of the Provisions of the Proposed Rule and Analysis of and Responses to Public Comments

A. Pre-Existing Condition Insurance Plan Program (45 CFR 152.2)

We proposed to remove the definition of "lawfully present" currently at 45 CFR 152.2 and insert the proposed definition of "lawfully present" at 45 CFR 155.20. The regulations at 45 CFR 152.2 apply to the PCIP program, which ended in 2014. Further, we proposed to update BHP regulations at 42 CFR 600.5 that currently cross-reference 45 CFR 152.2 to instead cross-reference the definition proposed in the proposed rule at 45 CFR 155.20. While we do not believe the definition at 45 CFR 152.2 is used for any other current CMS programs, we proposed to modify the regulation at 45 CFR 152.2 to cross-reference Exchange regulations at 45 CFR 155.20 to help ensure alignment of definitions for other programs. We sought comment on whether, alternatively, we should remove the definition of "lawfully present" currently at 45 CFR 152.2 instead of replacing it with a cross-reference to 45 CFR 155.20.

We did not receive public comments on these proposals to remove the definition of "lawfully present" at 45 CFR 152.2, to insert a definition of "lawfully present" at 45 CFR 155.20, and to update 45 CFR 152.2 and 42 CFR 600.5 to cross-reference the definition at 45 CFR 155.20. We are finalizing these provisions as proposed.

B. Exchange Establishment Standards and Other Related Standards Under the ACA (45 CFR 155.20)

1. DACA Recipients

The ACA generally requires that to enroll in a QHP through an Exchange, an individual must be a "citizen or national of the United States or an alien lawfully present in the United States." [21] While individuals who are not eligible to enroll in a QHP are also not eligible for APTC, PTC, or CSRs to lower the cost of the QHP, the ACA specifies that individuals who are not lawfully present are also not eligible for such insurance affordability programs for their Exchange coverage.[22] The ACA does not include a definition of "lawfully present." [23]

In a 2022 rulemaking, DHS discussed its definition of individuals who are considered "lawfully present" for purposes of applying for Social Security benefits in 8 CFR 1.3, reiterating that it is a "specialized term of art" that does not confer lawful status or authorization to remain in the United States, but instead describes noncitizens who are eligible for certain benefits as set forth in 8 U.S.C. 1611(b)(2) (*Deferred Action for Childhood Arrivals*, final rule, (87 FR 53152, 53156) (August 30, 2022) ("DHS DACA final rule")). DHS also stated that HHS and "other agencies whose statutes independently link eligibility for benefits to lawful presence may have the authority to construe such language for purposes of those statutory provisions." (87 FR 53211). We discuss this authority in further detail later in this section.

We first established a regulatory definition of "lawfully present" for purposes of the PCIP program in 2010 (75 FR 45013). In that 2010 rulemaking, we adopted the definition of "lawfully present" already established for Medicaid and CHIP eligibility for children and pregnant individuals under the CHIPRA 214 option articulated in the 2010 SHO establishing eligibility for lawfully present individuals. The definition of "lawfully present" articulated in the 2010 SHO was also informed by DHS regulations now codified at 8 CFR 1.3(a) defining "lawfully present" for the purpose of eligibility for certain Social Security benefits, with some revisions necessary for updating or clarifying purposes, or as otherwise deemed appropriate for the Medicaid and CHIP programs consistent with the Act.

In March 2012, we issued regulations regarding eligibility to enroll in a QHP through an Exchange that cross-referenced the definition of "lawfully present" set forth in the 2010 PCIP regulations (77 FR 18309). As the DACA policy had not yet been implemented, the definitions of "lawfully present" set forth in the 2010 PCIP regulations and the 2012 QHP regulations did not explicitly reference DACA recipients. However, these definitions specified that individuals granted deferred action were considered lawfully present for purposes of eligibility to enroll in a QHP through an Exchange.

In June 2012, DHS issued the memorandum "Exercising Prosecutorial Discretion for Individuals Who Came to the United States as Children," announcing the DACA policy.[24] DHS noted in this memorandum that DACA is a form of deferred action, and the forbearance of immigration enforcement action afforded to a DACA recipient is identical for immigration purposes to the forbearance afforded to any individual who is granted deferred action in other exercises of enforcement discretion. DHS stated that the DACA policy was "necessary to ensure that [its] enforcement resources are not expended on these low priority cases." [25] DHS did not address DACA recipients' ability to access any insurance affordability programs, as the statutory authority to address matters related to eligibility for such programs rests with HHS, not DHS.

In August 2012, we amended the regulatory definition of "lawfully present" at 45 CFR 152.2, used for both PCIP and Exchange purposes, to add an exception stating that an individual granted deferred action under DHS' DACA policy was not considered lawfully present for purposes of qualifying for the PCIP program or to enroll in a QHP through an Exchange (77 FR 52614), thereby treating DACA recipients differently from other deferred action recipients for purposes of these benefit programs. We also issued the 2012 SHO excluding DACA recipients from the definition of "lawfully residing" for purposes of Medicaid or CHIP eligibility under the CHIPRA 214 option. In 2014, we issued regulations establishing the framework governing a BHP, which also adopted the definition of "lawfully present" at 45 CFR 152.2, thereby aligning the definition of "lawfully present" for a BHP with Exchanges, Medicaid, and CHIP. As a result, DACA recipients, unlike all other deferred action recipients, are not currently eligible to enroll in a QHP through an Exchange, or for APTC or CSRs in connection with enrollment in a QHP through an Exchange, nor are they eligible to enroll in a BHP or Medicaid or CHIP under the CHIPRA 214 option because they are not considered lawfully present for purposes of these programs. In the August 2012 rulemaking that excluded

[21] 42 U.S.C. 18032(f)(3).

[22] 26 U.S.C. 36B(e)(2), 42 U.S.C. 18082(d), 42 U.S.C. 18071(e).

[23] 42 U.S.C. 18081(d)(1).

[24] U.S. Department of Homeland Security. (2012). Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children. *https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.*

[25] U.S. Department of Homeland Security. (2012). Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children. *https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.*

DACA recipients from CMS definitions of "lawfully present," we reasoned that, because the rationale that DHS offered for adopting the DACA policy did not pertain to eligibility for insurance affordability programs, these benefits should not be extended as a result of DHS deferring action under DACA.

HHS has now reconsidered its position and proposed to change its interpretation of the statutory phrase "lawfully present" to treat DACA recipients the same as other deferred action recipients as described in current regulations in paragraph (4)(iv) of the definition at 45 CFR 152.2. As proposed, DACA recipients would be considered lawfully present to the same extent as other deferred action recipients for purposes of the ACA at 42 U.S.C. 18032(f)(3) for the Exchange, and 42 U.S.C. 18051(e) for a BHP. We also proposed to establish rules in the Medicaid and CHIP programs to recognize that DACA recipients are "lawfully residing" in the United States for purposes of the CHIPRA 214 option. We are finalizing our proposal to consider DACA recipients to be lawfully present for purposes of the ACA at 42 U.S.C. 18032(f)(3) for the Exchange, and 42 U.S.C. 18051(e) for a BHP. We are not finalizing a definition for purposes of Medicaid and CHIP eligibility at this time, for the reasons detailed in section I.

In previously excluding DACA recipients from the definition of "lawfully present," we had posited that other definitions of lawful presence should not be used as a touchstone for eligibility if the program in question was not established with the explicit objective of expanding access to health insurance affordability programs. However, given the broad aims of the ACA to increase access to health coverage, we now assess that this rationale for excluding certain noncitizen groups from such coverage was not mandated by the ACA, and it failed to best effectuate congressional intent in the ACA. Additionally, HHS previously reasoned that considering DACA recipients eligible for insurance affordability programs was inconsistent with the relief that the DACA policy afforded. However, on further review and consideration, it is clear that the DACA policy is intended to provide recipients with a degree of stability and assurance that would allow them to obtain education and lawful employment, including because recipients remain lower priorities for removal. Extending eligibility to these individuals is consistent with those goals. There also was no statutory mandate to distinguish between recipients of deferred action under the DACA policy and other deferred action recipients.

While HHS' administration of insurance affordability programs and DHS' administration of the DACA policy are separate matters, HHS has determined that changing its own definitions of "lawfully present" for purposes of Exchange and BHP eligibility is consistent with DHS' explanation of this definition in the DHS DACA final rule. In the DHS DACA Final Rule, DHS suggested that an individual "whose temporary presence in the United States the Government has chosen to tolerate for reasons of resource allocation, administrability, humanitarian concern, agency convenience, and other factors" could be lawfully present (87 FR 53152, 53156).[26] This rule's change to no longer exclude DACA recipients from definitions of "lawfully present" applicable to Exchanges and the BHP is consistent with DHS' stated conception of lawful presence. It also aligns with the longstanding DHS definition of lawful presence for purposes of applying for Social Security benefits under 8 CFR 1.3. We are not finalizing a definition for purposes of Medicaid or CHIP under the CHIPRA 214 option at this time, for the reasons detailed in section I.

DHS issued a proposed rule, "Deferred Action for Childhood Arrivals," on September 28, 2021 (86 FR 53736), and the DHS DACA final rule on August 30, 2022 (87 FR 53152).[27] Among other things, the DHS DACA final rule reiterated USCIS's longstanding policy that a noncitizen who has been granted deferred action is deemed "lawfully present"—a specialized term of art that the Congress has used in other statutes, including in 8 U.S.C. 1611(b)(2) with respect to receipt of certain Social Security benefits. We are aware that DHS received public comments about the "HHS exclusion of DACA recipients from participation in Medicaid, the Children's Health Insurance Program (CHIP), and the ACA health insurance marketplace" (87 FR 53210). In response, DHS noted that it did not have the authority to make changes to the definitions of "lawfully present" used to determine eligibility for insurance affordability programs and affirmed that such authority rests with HHS (87 FR 53212). While review of the DHS DACA final rule in part prompted HHS to revisit its own interpretation of "lawfully present," HHS' administration of insurance affordability programs implicates separate statutory authority and policy considerations. HHS has independently decided that these changes reflect the best policy for the insurance affordability programs addressed in this rule, and also determined that the changes finalized in this rule align with longstanding DHS policy predating the DHS DACA final rule, under which deferred action recipients have been considered lawfully present for purposes of certain Social Security benefits under 8 CFR 1.3.

Further, since HHS first interpreted "lawfully present" to exclude DACA recipients in 2012, new information regarding DACA recipients' access to health insurance coverage has emerged. In the proposed rule, we cited a 2021 survey of DACA recipients that found while DACA may facilitate access to health insurance through employer-based plans, 34 percent of DACA recipient respondents reported that they were not covered by health insurance.[28] Since the proposed rule was published, an updated version of this survey has become available. According to 2022 survey data, 27 percent of DACA recipients are not covered by health insurance.[29] While this represents a modest improvement in the uninsured rate among DACA recipients, it is important to note that DACA recipients are still more than three times more likely to be uninsured than the general U.S. population, which had a national uninsured rate of 7.7 percent.[30] [31]

[26] See "Deferred Action for Childhood Arrivals" (87 FR 53152). Specifically, see 87 FR 53206 for DHS's discussion of the rule's provisions regarding lawful presence. *https://www.federalregister.gov/d/2022-18401/p-744*

[27] Current court orders prohibit DHS from fully administering the DACA final rule. However, a partial stay permits DHS to continue processing DACA renewal requests and related applications for employment authorization documents. *See* USCIS, DACA Litigation Information and Frequently Asked Questions (Nov. 3, 2022), *https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/daca-litigation-information-and-frequently-asked-questions.*

[28] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care* (2022). *https://www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf.*

[29] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care* (2023). *https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf.*

[30] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care* (2023). *https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf.*

[31] U.S. Department of Health and Human Services. New HHS Report Shows National Uninsured Rate Reached All-Time Low in 2023 After Record-Breaking ACA Enrollment Period (2023). *https://www.hhs.gov/about/news/2023/08/03/new-hhs-report-shows-national-uninsured-rate-reached-all-time-low-2023-after-record-breaking-aca-enrollment-period.html.*

Individuals without health insurance are less likely to receive preventive or routine health screenings and may delay necessary medical care, incurring high costs and debts.[32] In the proposed rule, we noted that the 2021 survey of DACA recipients also found that 47 percent of respondents attested to having experienced a delay in medical care due to their immigration status and 67 percent of respondents stated that they or a family member were unable to pay medical bills or expenses.[33] According to newly available 2022 survey data, both of these rates have increased, with 48 percent of respondents experiencing a delay in medical care due to their immigration status, and 71 percent of respondents unable to pay medical bills or expenses.[34] These outcomes can have downstream impacts that further disrupt individuals' health and financial stability, and therefore their ability to work or study. Delays in care can lead to negative health outcomes including longer hospital stays and increased mortality, whereas being unable to pay medical bills puts individuals at higher risk of food and housing insecurity.[35] [36] [37]

The COVID–19 PHE also highlighted the need for this population to have access to high quality, affordable health coverage. According to a demographic estimate by the Center for Migration Studies, over 200,000 DACA recipients served as essential workers during the COVID–19 PHE.[38] This figure encompasses 43,500 DACA recipients who worked in health care and social assistance occupations, including 10,300 in hospitals and 2,000 in nursing care facilities.[39] During the height of the pandemic, essential workers were disproportionately likely to contract COVID–19.[40] [41] These factors emphasize how increasing access to health insurance would improve the health and well-being of many DACA recipients currently without coverage. In addition to improving health outcomes, these individuals could be even more productive and better economic contributors to their communities and society at large with improved access to health care, as evidenced by a 2016 study finding that a worker with health insurance is estimated to miss 77 percent fewer days than an uninsured worker.[42]

Our proposal to include DACA recipients in the definition of "lawfully present" for purposes of Exchange and BHP coverage aligns with the goals of the ACA—specifically, to lower the number of people who are uninsured in the United States and make affordable health insurance available to more people. In the proposed rule, we noted that DACA recipients represent a pool of relatively young, healthy adults; at an average age of 30 per U.S. Citizenship and Immigration Services (USCIS) data, they are younger than the general Exchange population.[43] Thus, there may be a slight positive effect on the Exchange or BHP risk pools as a result of this proposed change, discussed further in the Regulatory Impact Analysis in section V.C. of this final rule.

As discussed above, HHS sees no reason to treat DACA recipients differently from other noncitizens who have been granted deferred action for purposes of eligibility for health insurance coverage through an Exchange or BHP. Accordingly, we proposed to amend our regulations at 42 CFR 600.5 and 45 CFR 152.2 and 155.20 so that DACA recipients would be considered lawfully present for purposes of eligibility for health insurance coverage through an Exchange or a BHP, just like other individuals granted deferred action (88 FR 25313). Specifically, we proposed to amend QHP regulations at 45 CFR 155.20 to remove the current cross-reference to 45 CFR 152.2 and to instead add a definition of "lawfully present" for purposes of determining eligibility to enroll in a QHP through an Exchange. In section II.B of the preamble of the proposed rule, we explained the proposal to remove the definition of "lawfully present" currently in the PCIP regulations at 45 CFR 152.2 and add a cross reference to 45 CFR 155.20 to align the Exchange regulations. In section II.B of preamble of the proposed rule, we also explained the proposal to remove the existing exception in 45 CFR 152.2 that excludes DACA recipients from the definition of "lawfully present," and to clarify that references to noncitizens who are granted deferred action who are lawfully present for purposes of this provision include DACA recipients. Finally, in section II.E of preamble of the proposed rule, we explained the proposal to amend BHP regulations at 42 CFR 600.5 to cross-reference the definition of "lawfully present" proposed at 45 CFR 155.20. Under these proposed changes, we estimated that approximately 124,000 DACA recipients would enroll in a QHP through an Exchange or a BHP. We received public comments on these proposals. The following is a summary of the comments we received and our responses.

General Support

Comment: Many commenters noted general support for CMS' proposal to include DACA recipients in the definition of "lawfully present," such that DACA recipients may be eligible for CMS insurance affordability programs, including enrolling in a QHP and obtaining APTC and CSRs through an Exchange, or enrolling in a BHP.

Response: We appreciate comments that we received in support of this rule's change to no longer exclude DACA recipients from definitions of "lawfully present" used to determine eligibility to

[32] Kaiser Family Foundation. Key Facts About the Uninsured Population (2023). *https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.*

[33] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care* (2022). *https://www.nilc.org/wp-content/uploads/2022/06/NILC_DACA-Report_060122.pdf.*

[34] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care* (2023). *https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf.*

[35] Weissman JS, Stern R, Fielding SL, Epstein AM. (1991). Delayed access to health care: risk factors, reasons, and consequences. *Ann Intern Med. 1991 Feb 15;114(4):325–31. https://doi.org/10.7326/0003-4819-114-4-325.*

[36] Hanna, T.P., King, W.D., Thibodeau, S., Jalink, M., Paulin, G.A., Harvey-Jones, E., O'Sullivan, D.E., Booth, C.M., Sullivan, R., & Aggarwal, A. (2020). Mortality due to cancer treatment delay: systematic review and meta-analysis. *BMJ (Clinical research ed.), 371, m4087. https://doi.org/10.1136/bmj.m4087.*

[37] Himmelstein, D. U., Dickman, S. L., McCormick, D., Bor, D. H., Gaffney, A., & Woolhandler, S. (2022). Prevalence and Risk Factors for Medical Debt and Subsequent Changes in Social Determinants of Health in the US. *JAMA network open, 5(9), e2231098. https://doi.org/10.1001/jamanetworkopen.2022.31898.*

[38] Center for Migration Studies. *DACA Recipients are Essential Workers and Part of the Front-line Response to the COVID–19 Pandemic, as Supreme Court Decision Looms* (2020). *https://cmsny.org/daca-essential-workers-covid/.*

[39] Center for Migration Studies. *DACA Recipients are Essential Workers and Part of the Front-line Response to the COVID–19 Pandemic, as Supreme Court Decision Looms* (2020). *https://cmsny.org/daca-essential-workers-covid/.*

[40] Nguyen, L.H., Drew, D.A., Graham, M.S., Joshi, A.D., Guo, C.-G., Ma, W., Mehta, R.S., Warner, E.T., Sikavi, D.R., Lo, C.-H., Kwon, S., Song, M., Mucci, L.A., Stampfer, M.J., Willett, W.C., Eliassen, A.H., Hart, J.E., Chavarro, J. E., Rich-Edwards, J.W., . . . Zhang, F. (2020). Risk of COVID–19 among front-line health-care workers and the general community: A prospective cohort study. *The Lancet Public Health, 5*(9). *https://doi.org/10.1016/S2468-2667(20)30164-X.*

[41] Barrett, E.S., Horton, D.B., Roy, J., Gennaro, M.L., Brooks, A., Tischfield, J., Greenberg, P., Andrews, T., Jagpal, S., Reilly, N., Carson, J.L., Blaser, M.J., & Panettieri, R.A. (2020). Prevalence of SARS–COV–2 infection in previously undiagnosed health care workers in New Jersey, at the onset of the U.S. covid-19 pandemic. *BMC Infectious Diseases, 20*(1). *https://doi.org/10.1186/s12879-020-05587-2.*

[42] Dizioli, Allan and Pinheiro, Roberto. (2016). *Health Insurance as a Productive Factor.* Labour Economics. *https://doi.org/10.1016/j.labeco.2016.03.002.*

[43] Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2023. U.S. Citizenship and Immigration Services. *https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy23_q4.pdf.*

enroll in a QHP, for APTC and CSRs through an Exchange, and for a BHP.

Comment: Commenters noted support for CMS' clarification that the provisions in the proposed rule only pertained to the definitions of "lawfully present" to determine eligibility for certain health care benefits—including eligibility to enroll in a QHP or a BHP—and that nothing in the proposed rule provided any noncitizen relief or protection from removal, or conveyed any immigration status or other authority for a noncitizen to remain in the United States under existing immigration laws or to become eligible for any immigration benefit available under the DHS' or DOJ's purview.

Response: We reiterate that the provisions in this final rule, only apply to eligibility to enroll in a QHP and a BHP.

Comment: Some commenters stated that the proposed rule was a lawful exercise of the Department's authority under the ACA to define "lawfully present" for use in determining eligibility in HHS programs, and that the provisions in the proposed rule better effectuated the ACA's purposes than the current regulatory scheme. One commenter indicated that the rule corrects an error of CMS' 2012 regulation, which treated DACA recipients as a *sui generis* class of deferred action recipients, rather than what the commenter described as one in a long line of deferred action policies in the nation's history.

One commenter noted that the ACA uses the phrase "lawfully present" as an eligibility criterion in multiple provisions. The commenter believed that the Congress's policy directive, to consider individuals who are lawfully present, and only those lawfully present, as eligible for the ACA's benefits, was clear. The commenter noted that although the ACA did not define "lawfully present," that this phrase was also used at 8 U.S.C. 1611(b)(2), which predates the ACA, as an eligibility criterion for Title II Social Security benefits. The commenter noted that 8 U.S.C. 1611(b)(2) grants authority to the Attorney General (now the Secretary of Homeland Security) to define who is lawfully present for purposes of Title II Social Security benefits. The commenter noted that when we changed course after DACA was announced, DHS did not change the definition of "lawfully present" used in their regulations.

The commenter described the status quo as incongruous, particularly given how DHS treats DACA recipients for purposes of immigration law. The commenter noted that although DACA, and deferred action generally, is not a form of "lawful status," DHS does not consider deferred action recipients to be unlawfully present in the United States as long as their deferred action is in effect. The commenter further noted that unlawful presence has serious ramifications, including inadmissibility to the United States. The commenter stated that DACA recipients are, due to decades-old DHS regulations, eligible for work authorization. As a result of CMS' prior rulemaking, this meant that although DACA recipients have been eligible to live and work in the United States and have been eligible to receive benefits like Social Security, they are barred from accessing crucial aspects of the health care system. The commenter supported the elimination of this inconsistency, which would "thereby harmonize the definition of a single statutory phrase across agencies and applications, following the lead of the Federal agency best suited to make immigration determinations—DHS."

Response: We agree that this rule is a lawful exercise of CMS' authority to interpret the statutes it is charged with implementing, as described in detail throughout this rule. We agree with commenters that the changes proposed in this rule better effectuate the goals of the ACA by expanding access to affordable health insurance coverage and are consistent with DHS' rules for Social Security defining "lawfully present" at 8 CFR 1.3. We further acknowledge that this rule will eliminate the discrepancy by which DACA recipients are currently treated differently from other recipients of deferred action for purposes of eligibility for enrollment in a QHP or a BHP.

Because we are not finalizing a definition of "lawfully present" for purposes of Medicaid and CHIP eligibility under the CHIPRA 214 option at this time, there will be differences between who is considered "lawfully present" for Medicaid and CHIP and who is considered "lawfully present" for Exchange coverage and the BHP. We acknowledge commenters' interest in having a uniform definition across our insurance affordability programs, as uniformity was a factor we considered in our proposals. However, we are not finalizing a definition of "lawfully present" for purposes of Medicaid and CHIP eligibility at this time due to the reasons detailed in section I. Accordingly, we will consider, along with the comments we received on the proposed amendments to the definitions for purposes of Medicaid and CHIP, the potential benefits of such uniformity in any future rulemaking on this topic.

Comment: Many commenters stated that they agreed that DACA recipients should be treated the same as other recipients of deferred action, and that there is no reason for CMS to treat DACA recipients differently from other recipients of deferred action. One commenter stated that they believed deferred action recipients were eligible for QHP and BHP per the ACA, and that CMS' prior policy "undermined this statutory eligibility" and appreciated CMS updating the current policy of exclusion.

A comment submitted by some State attorneys general referred to the current exclusion as a "discrepancy in the current regulatory scheme." This commenter also noted that the Federal Government has a long history of granting deferred action, including 17 different deferred action policies prior to DACA, and that none of the deferred action recipients under any of these other policies were categorically denied access to health insurance affordability programs. The commenter noted that the current exclusion bars DACA recipients from health insurance affordability programs that their tax contributions help fund. Another commenter stated this would bring greater consistency to Federal policy in this area and would advance the goals of the ACA.

Response: We agree with the commenters that DACA recipients should be treated the same as other recipients of deferred action for purposes of eligibility for Exchanges and the BHP. Commenters are correct that, up until now, DACA recipients have been the only category of deferred action recipients excluded from eligibility for these insurance affordability programs. We acknowledge that this policy did not best effectuate the ACA's directive to consider individuals who are "lawfully present" to be otherwise eligible for coverage. We agree with the commenter who characterized this exclusion of DACA recipients as a "discrepancy in the regulatory scheme." When this final rule is effective on November 1, 2024, this discrepancy between DACA recipients, who are deferred action recipients, and other deferred action recipients will be corrected with respect to Exchange and BHP coverage, and all noncitizens granted deferred action by DHS will be considered as lawfully present for the purposes of eligibility for these programs. We will consider the impacts of eliminating this discrepancy for purposes of Medicaid and CHIP eligibility under the CHIPRA 214 option in future rulemaking.

Comment: Some commenters questioned whether the ACA provided an adequate legal basis for CMS to treat DACA recipients differently from other recipients of deferred action. Commenters further stated that they believed that CMS' 2012 IFR excluding DACA recipients from the definition of "lawfully present" was not aligned with the ACA's goal to expand access to affordable health coverage to the uninsured.

Response: The ACA does not define the term "lawfully present," but our regulations implementing the ACA have recognized that noncitizens with a currently valid period of deferred action were lawfully present. For the reasons stated above, we believe that the ACA supports our proposed change in policy for DACA recipients as these individuals will be treated as lawfully present just like other individuals granted deferred action for the purposes of eligibility for health insurance through an Exchange or a BHP.

We agree with the comment that our prior policy did not fully align with the ACA's goal to expand access to affordable health coverage for the uninsured. We agree with commenters that the changes in this rule better effectuate the congressional intent in the ACA, given the ACA's broad aims to expand access to affordable health insurance coverage. As mentioned throughout this rule, new information regarding DACA recipients' difficulty in accessing health insurance coverage has become available since we adopted our prior policy. As mentioned previously in this rule, despite some DACA recipients being able to access health insurance coverage through their employers as a result of the employment authorization provided under the DACA policy, DACA recipients are still more than three times more likely to be uninsured than the general U.S. population, which had a national uninsured rate of 7.7 percent.[44] [45]

Comment: Some commenters noted that the current exclusion of DACA recipients from CMS definitions of "lawfully present" is inconsistent with other rules pertaining to public benefits eligibility for individuals with deferred action, including DHS regulations at 8 CFR 1.3 for the purposes of eligibility for Title II Social Security benefits. Commenters supported CMS' proposal to better align with DHS' policies.

Response: This rule would bring eligibility for health insurance through an Exchange and a BHP into alignment with DACA recipients' treatment under rules used by the Social Security Administration for Title II Social Security Benefits, as articulated in DHS regulations at 8 CFR 1.3. As we are not finalizing a definition of "lawfully present" for purposes of eligibility for Medicaid or CHIP under the CHIPRA 214 option at this time, due to the reasons detailed in section I, the definition used for purposes of those programs will continue to differ from DHS regulations at 8 CFR 1.3 with respect to DACA recipients. We will consider the impacts of updating the Medicaid and CHIP definition of "lawfully present" in future rulemaking.

Comment: Some commenters, including nonprofit advocacy organizations and State government agencies, stated the belief that no longer excluding DACA recipients from Exchange coverage could have a positive impact on Exchange risk pools. One government agency noted that improving the risk pool in this way will benefit insurers, and commenters further noted that improving risk pools in this way is expected to exert downward pressure on QHP premiums and to improve market stability. In support of the argument that allowing DACA recipients to access Exchange coverage could improve individual market risk pools, multiple commenters cited a study that found that DACA recipients had similar self-reported health status to U.S. born individuals, with 92 percent of survey respondents eligible for DACA reporting excellent, very good, or good health.[46] Commenters noted that DACA recipients are also younger, on average, than current Exchange enrollees, with an average age of 30.[47]

Response: While we are unable to quantify the potential impacts of this policy on Exchange risk pools, we believe it is reasonable to predict that allowing DACA recipients to enroll in Exchange coverage may have a positive impact. DACA recipients, whose average age is now 30, are younger than the existing population of Exchange enrollees, of whom 64 percent are age 35 or older.[48] [49] As commenters noted, DACA recipients are also generally in good health, due in part to the fact that DACA recipients are a relatively young population. However, we note that there does exist a slight gap between DACA recipients who report they are in excellent or very good health (64 percent) as compared to U.S. citizens (71 percent).[50] We are not able to assess how DACA recipients' health status compares to that of the existing population of Exchange enrollees, or to predict any downstream impacts on Exchange risk pools as a result. However, we are hopeful that allowing DACA recipients to access Exchange coverage may help address these existing disparities due to the positive health impacts of having health insurance, which are detailed later in this section.

Comment: One State government agency noted that extending QHP eligibility for DACA recipients is particularly important because DACA recipients may lose access to State-funded Medi-Cal during unwinding. Another commenter noted that extending QHP eligibility for DACA recipients is particularly important because even in the State of California, where DACA recipients may qualify for State-funded Medi-Cal if they are income-eligible, 57 percent of individuals likely eligible for DACA have incomes above 200 percent of the FPL. Allowing these DACA recipients to enroll in health coverage through a QHP provides an important source for affordable health insurance coverage that is not currently available.

Response: We appreciate a commenter pointing out the importance of making Exchange coverage available to DACA recipients who may not be eligible for, or who may be losing, State-funded health coverage during unwinding. While we are not finalizing a definition for purposes of Medicaid and CHIP eligibility at this time, due to the reasons detailed in section I, we will take this comment into consideration as part of any future rulemaking on this topic.

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[44] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care* (2023). *https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf.*

[45] U.S. Department of Health and Human Services. *New HHS Report Shows National Uninsured Rate Reached All-Time Low in 2023 After Record-Breaking ACA Enrollment Period* (2023). *https://www.hhs.gov/about/news/2023/08/03/new-hhs-report-shows-national-uninsured-rate-reached-all-time-low-2023-after-record-breaking-aca-enrollment-period.html.*

[46] Key Facts on Deferred Action for Childhood Arrivals (DACA) (2023). *https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/.*

[47] Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2023. U.S. Citizenship and Immigration Services. *https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy23_q4.pdf.*

[48] Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2023. U.S. Citizenship and Immigration Services. *https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy23_q4.pdf.*

[49] Centers for Medicare and Medicaid Services. 2024 Open Enrollment Report. *https://www.cms.gov/files/document/health-insurance-exchanges-2024-open-enrollment-report-final.pdf.*

[50] Key Facts on Deferred Action for Childhood Arrivals (DACA) (2023). *https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/.*

General Opposition

Comment: Some commenters noted general opposition to CMS' proposal to consider DACA recipients lawfully present for purposes of insurance affordability programs. Some commenters urged CMS to withdraw the rule, or alternatively, to remove the proposed changes that would no longer exclude DACA recipients from the definitions of "lawfully present" used to determine eligibility for CMS insurance affordability programs.

Some commenters noted opposition to this rule on the basis that they believe DACA recipients entered the United States unlawfully, that they believe DACA recipients are undocumented, or that they believe DACA recipients have broken the law. Commenters stated that rules such as the one that CMS has proposed further incentivize illegal immigration, increase fraud and abuse of government systems, and encourage dependency on Federal programs.

Response: We recognize that some of the public commenters are opposed to the change this rule would make, and there is significant public debate concerning the availability of some public benefits for noncitizens. Although we recognize that the Congress has made a general statement of the immigration policy of the United States at 8 U.S.C. 1601, the Congress has provided some express exceptions that enable certain noncitizens to obtain certain public benefits under other authorities. For example, as noted in the proposed rule, individuals who are either U.S. citizens or nationals or lawfully present in the United States are eligible to enroll in a QHP and are eligible for PTCs, APTCs, and CSRs (88 FR 25313). We submit that our rule is consistent with the relevant statutory authorities.

In addition, DHS has recognized that even individuals who did not enter the United States legally could become "lawfully present" under the statutes governing particular benefit programs (87 FR 53152, 53156). DHS notes that "the term 'lawful presence' historically has been applied to some persons who are subject to removal (and who may in fact have no "lawful status"), and whose immigration status affords no protection from removal, but whose temporary presence in the United States the Government has chosen to tolerate for reasons of resource allocation, administrability, humanitarian concern, agency convenience, and other factors. Lawful presence also encompasses situations in which the Secretary, under express statutory authorization, designates certain categories of noncitizens as lawfully present for particular statutory purposes, such as receipt of Social Security benefits" (87 FR 53152). As discussed throughout this rule, we have the authority to modify our definition of "lawfully present" used as an eligibility criterion for the programs we administer and for which we have oversight responsibilities.

We reiterate in response to the public comments that this rule aims to establish eligibility criteria only for Exchanges and a BHP and does not address or revise immigration policy, including DHS' DACA policy. We also reiterate that other recipients of deferred action have long been considered lawfully present under our regulations and policies, and this rule is removing the exception for DACA recipients for the purposes of eligibility for Exchanges and a BHP. We note that while we are not addressing the definition of "lawfully present" for purposes of Medicaid and CHIP eligibility in this final rule, we will consider commenters' concerns about negative impacts of DACA recipients being considered eligible for Medicaid or CHIP under the CHIPRA 214 option in future rulemaking. The rulemaking process with regard to that portion of the proposal is ongoing.

We also do not believe that this rule will encourage irregular migration, fraud or abuse of government systems, or encourage dependency on Federal programs. While the factors contributing to irregular migration are complex and multifaceted, DHS has clearly indicated from the beginning of the DACA policy that only certain noncitizens continuously residing in the United States since June 15, 2007 can be considered for deferred action under DACA.[51] We do not believe it is reasonable to conclude that no longer excluding DACA recipients from eligibility for insurance through an Exchange or a BHP will have any material impact on rates of illegal immigration. Individuals must have their lawful presence electronically verified by DHS to enroll in our insurance affordability programs, which ensures that noncitizens who are not lawfully present, as defined in this final rule, will not be able to enroll in health insurance through an Exchange and a BHP.

Comment: A few commenters stated their belief that DACA recipients should not be able to access the insurance affordability programs discussed in this rule because they do not pay into the U.S. health care system via taxes.

Response: Contrary to the commenter's assertion, we note that DACA recipients do pay Federal, State, and local taxes. One analysis estimated that DACA recipients contribute $6.2 billion in Federal taxes and $3.3 billion in State and local taxes each year.[52] In addition, we note that only DACA recipients who attest that they will file a Federal income tax return will be eligible for APTCs for Exchange coverage.

Comment: A few commenters stated their belief that DACA recipients should not be able to access the insurance affordability programs addressed in this rule unless they become U.S. citizens, or that DACA recipients and other noncitizens should not be able to access more benefits than U.S. citizens. A few commenters expressed their belief that DACA recipients should use employer sponsored coverage or other private coverage. One commenter indicated that they would be in favor of making subsidized health insurance coverage available to DACA recipients only if they are employed.

Response: Limiting access to the insurance affordability programs addressed in this rule to U.S. citizens, as some commenters suggested, is beyond our authority under the ACA. Further, the changes in this rule result in DACA recipients becoming potentially eligible for health insurance through an Exchange or a BHP for which U.S. citizens, U.S. nationals, and other noncitizens determined to be lawfully present are already considered eligible. Nothing in this rule restricts or changes the insurance affordability programs available to U.S. citizens, U.S. nationals, or other such lawfully present noncitizens.

Finally, we do not have authority under the ACA to limit the availability of coverage to individuals who are employed, although there is evidence that the majority of DACA recipients are employed.[53]

Comment: One nonprofit organization opposed the proposal stating that by expanding the definition of "lawfully present," DACA recipients would rely

[51] See U.S. Department of Homeland Security. (2012) *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children. https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf, and 8 CFR 236.22(b)(2).*

[52] Center for American Progress. The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition. (2022). *https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/.*

[53] Center for American Progress. Results from Tom K. Wong et al., 2022 National DACA Study. *https://www.americanprogress.org/wp-content/uploads/sites/2/2023/04/DACA-Survey-2022-Toplines.pdf.*

on Federal and State benefits that might be taken away if a court rules against DHS' DACA policy as codified in its 2022 DACA final rule (87 FR 53152).

Response: An individual could cease to be "lawfully present" for a number of reasons, including because DHS terminates an individual's grant of deferred action on a case-by-case basis, because the Congress enacts a statute that makes changes to current law, or, as the commenter suggests, because of a judicial decision. Regardless of whether any of these situations may come to pass in the future, we see no compelling reason not to update our regulations, consistent with our statutory and regulatory authority, as we have found that our current regulations do not best effectuate the ACA. As is detailed throughout this rule, we believe there are significant physical health, mental health, and financial benefits associated with having access to health insurance coverage. For both DACA recipients and other noncitizens who may no longer be considered "lawfully present" under our regulations at some point in the future, we do not believe that the potential risk of losing coverage in the future outweighs the potential benefit of increasing access to coverage at present.

Comment: Some commenters noted general opposition to this proposed rule stating that they believe more resources should go towards ensuring that U.S. citizens have access to the health insurance coverage and health care services that they need, before directing funds towards DACA recipients and other noncitizens. A few commenters stated frustration that the cost of health insurance for U.S. citizens, especially those who work, who have families, who are low income, or who own small businesses is too high, and they are suffering without access to affordable health care. Commenters requested that more work should go to fixing the current health care system and that American citizens or those who entered the United States legally should be receiving better care.

Response: We are committed to ensuring access to quality, affordable health insurance coverage and health care for everyone who is eligible for programs we regulate or administer. The insurance affordability programs being made available to DACA recipients in this rule—Exchange coverage and the BHP, specifically—have been and will continue to be available to eligible U.S. citizens, U.S. nationals, and other lawfully present noncitizens. The purpose of this rule is to establish eligibility requirements for health insurance through an Exchange and a BHP rather than dictate where tax dollars are directed. We note that nothing in this rule will restrict or eliminate the availability of these insurance affordability programs to U.S. citizens. In fact, it is possible that allowing DACA recipients to enroll in QHPs through an Exchange could lower QHP premiums for all enrollees. Given that DACA recipients are, on average, younger than current Exchange enrollees, having DACA recipients in the QHP risk pools may lower the associated premiums of such plans.

Comment: Some commenters believe the policies in this proposed rule are outside of the President's purview, are not permitted under the ACA, and should be policies established by the Congress. Some commenters noted that the ACA was passed after extensive discussions within the Congress and specific statements were made regarding "lawful presence" and who would receive ACA benefits. A few commenters further noted that the DACA policy was implemented to prevent deportation, and to provide work permits for those individuals, not to extend government benefits to them. Additional commenters expressed their belief that whether to provide health insurance to individuals who are DACA recipients falls to the Congress, and the President has no legal authority. A few commenters also pointed out that a prior administration originally prevented DACA recipients from accessing ACA coverage.

Response: We do not agree with the suggestion that the proposed rule exceeds our legal authority. We have identified the relevant statutory authority that supports our proposed and final rule. Moreover, we have identified specific reasons for proposing a change of policy and have sought public comments consistent with the requirements of the Administrative Procedure Act (APA). We have demonstrated that the rule is consistent with our existing authority under the law.

Comment: Commenters stated their view that the DACA policy is unlawful, and that this rule runs counter to immigration laws including statute, case law, and ongoing litigation in the Fifth Circuit Court of Appeals. One commenter stated that CMS was correct in its initial judgment that there was good reason to treat DACA recipients differently from other recipients of deferred action. The commenter further asserted that unlike other forms of prosecutorial discretion, DACA was "plainly unlawful," as it was not authorized by the Congress, conflicted with other statutes, and did not originally undergo notice and comment rulemaking.

One nonprofit organization cited the Fifth Circuit's ruling in which the court found that DHS does not have authority to "broaden the categories of aliens who are entitled to lawful presence in the United States." [54] The commenter also cited the court's findings that the DACA Memorandum "contradicts significant portions of the Immigration and Nationality Act (INA)," and that the 2012 Memorandum by then-DHS Secretary Janet Napolitano which announced the DACA policy violated the procedural requirements of the APA. One commenter further stated that the Congress identified in the INA several discrete categories of noncitizens that may be eligible for deferred action, nowhere granting the executive branch authority to unilaterally expand on those categories. One nonprofit organization cited the court's finding that the DACA policy "failed under step one of the Chevron framework." One nonprofit organization noted that the Supreme Court has consistently held that the Congress holds plenary authority over immigration. The commenter cited *Kleindienst* v. *Mandel*,[55] in which the Court noted that the Congress has "plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which the Congress has forbidden."

One commenter further stated that they believed that by including DACA recipients in CMS' definition of "lawfully present," CMS was "reinforcing" DACA, which they viewed to be an "unlawful program." One nonprofit research organization stated that because the DACA policy is not a lawful exercise of deferred action, and because the DACA policy violates procedural and substantive Federal law, that CMS must exclude DACA recipients from its definitions of "lawfully present."

Response: We believe that the DACA final rule is lawful. As DHS articulates in detail in their final rule, the DACA final rule represents a lawful exercise of the Secretary of Homeland Security's authority and discretion regarding deferred action (87 FR 53152).

Perhaps more importantly, this rule does not in any way change existing immigration policy, nor does it confer lawful immigration status. As we explained in the proposed rule, "[t]hese proposed definitions are solely for the purposes of determining eligibility for

[54] *Texas et al.* v. *United States et al.*, 50 F.4th 498 (5th Cir. 2022).

[55] 408 U.S. 753, 766 (1972).

specific HHS health programs and are not intended to define lawful presence for purposes of any other law or program." We also noted that the proposed rule would not provide any noncitizen relief or protection from removal or convey any immigration status or other authority for a noncitizen to remain in the United States under existing immigration laws or to become eligible for any immigration benefit available under the DHS's or DOJ's purview.

The ACA uses the term "lawfully present" as an eligibility criterion for health insurance through an Exchange or a BHP. As noted previously in this final rule, those terms were not defined in the operative statute, and we have the authority to define these terms for the purposes of determining eligibility for health insurance through an Exchange and a BHP.

Comment: One commenter, a nonprofit research organization, stated that because CMS' proposed change in policy is not based on a reasonable rationale, that extending benefits to DACA recipients is *ultra vires* and violates the APA. The commenter further stated that it believed that CMS' rationale for changing its interpretation is not justified by the facts and is therefore unlawful under the APA. The commenter asserted that CMS has failed to meet the standards of the APA by proposing to consider DACA recipients as "lawfully present" despite the DACA policy's "serious legal deficiencies." The commenter specifically stated that CMS' explanation that, upon further review, the DACA policy "was intended to provide recipients with the stability and assurance that would allow them to obtain education and lawful employment, and to integrate as productive members of society" is inconsistent with the inherent nature of deferred action, which DHS has specified can be "terminated at any time, in its discretion." The commenter noted that if DACA is truly a form of prosecutorial discretion, then DACA grants must be case-by-case and based on prioritization of cases, rather than a class-based benefits program intended to provide stability to a specific class of beneficiaries in a manner similar to standard immigration benefits. The commenter stated that any stability DACA recipients may receive as a part of the policy is unwarranted, and that deferred action does not provide lawful status or a right to remain in the United States nor does it excuse past or future periods of unlawful presence.

Response: We have met our obligations under the APA to explain our proposed policy change to no longer exclude DACA recipients from the group of individuals with deferred action in our definitions of lawful presence for purposes of eligibility for health insurance through an Exchange and a BHP. As noted above, we have the authority to define the term "lawfully present" as an eligibility criterion for health insurance through an Exchange or a BHP as the term was previously not defined in the operative statute.

Additionally, as discussed in this final rule and in the proposed rule, new information regarding DACA recipients' difficulty accessing health insurance coverage and health care has become available since we first excluded DACA recipients from our definitions of "lawfully present" in 2012. In this rule, we are adopting a policy that better effectuates the goals of the ACA to promote access to affordable health insurance coverage through Exchanges and BHPs. Further, we disagree with the commenter's characterization that any stability that DACA recipients receive related to the DACA policy is unwarranted. While deferred action does not confer legal immigration status or a right to remain in the United States, it does provide a degree of stability to recipients, including through providing eligibility to request employment authorization.

Comment: One government agency stated that it is illogical to consider DACA recipients and other deferred action recipients to be "lawfully present" because the "action" that is deferred under DACA and other deferred action policies is action on their recipients' unlawful presence. In support of this argument, the commenter cited an Eleventh Circuit opinion, which has noted that DACA recipients are "given a reprieve from potential removal; that does not mean they are in any way 'lawfully present' under the [INA]." [56]

Response: As DHS explained in their DACA final rule, the concept of "lawful presence" is a term of art used in certain benefit statutes and without a single controlling statutory definition. Still, we acknowledge that lawful presence is not an immigration status and does not connote a "lawful immigration status." As DHS states in its DACA final rule, "[a]n individual's lawful presence can include situations in which the executive branch tolerates an individual being present in the United States at a certain, limited time or for a particular, well-defined period. The term is reasonably understood to include someone who is (under the law as enacted by the Congress) subject to removal, and whose immigration status affords no protection from removal, but whose temporary presence in the United States the Government has chosen to tolerate, including for reasons of resource allocation, administrability, humanitarian concern, agency convenience, and other factors." (87 FR 53152).

Deferred action recipients have been considered lawfully present under regulations for many years for purposes of eligibility for Social Security, the Exchange, BHP, and under existing CMS policy outlined in the 2010 SHO for Medicaid and CHIP under the CHIPRA 214 option, and thus may be receiving benefits if they meet all other eligibility requirements for those programs.

The INA does not include a definition of "lawfully present." As noted by DHS in their DACA final rule, there is no singular definition of "lawfully present" for all purposes and the term is not a legal immigration status. Similar to how DHS considers deferred action recipients lawfully present for purposes of Title II Social Security benefits under 8 CFR 1.3, this rule only addresses eligibility for specific programs. Under the authority granted the HHS Secretary by the ACA, we are defining "lawfully present" for purposes of Exchanges and BHP programs and believe we have adopted a reasonable approach in doing so.

Comment: A few commenters stated that CMS' changes to consider DACA recipients as "lawfully present" for purposes of its programs should go through the Congress, and that this rule reaches beyond the jurisdiction of the Executive branch. Commenters further indicated that they believed that bypassing the Congress was inappropriate because of the Congress's role in appropriating funding.

Response: Where the Congress uses a term like "lawfully present" but does not define the term, the agency is required to interpret the statute, particularly where the Congress grants the agency broad rulemaking authority to implement the statute, as it has done in the ACA.[57] We do not agree with the commenters' suggestion that we have acted beyond our statutory authority by proposing to include DACA recipients within the term "lawfully present" for purposes of eligibility for health insurance through an Exchange or a BHP as addressed in this rule. After review, we believe that the revised definition of "lawfully present" for

[56] *Estrada* v. *Becker*, 917 F.3d 1298, 1305 (11th Cir. 2019) (citing Ga. Latino Alli. for Human Rights v. Governor of Ga., 691 F.3d 1250, 1258 n.2 (11th Cir. 2012).

[57] 42 U.S.C. 18041(a)(1).

purposes of eligibility for health insurance through an Exchange or BHP is the most accurate interpretation of the ACA's text and better effectuates the Congressional intent in the ACA.

Access to Care

Comment: Many advocacy organizations, government agencies, and health insurers noted that despite DACA recipients' relatively high rates of employment, DACA recipients continue to face barriers to accessing health insurance coverage and health care. Some commenters cited a 2021 study that found that over one-third of DACA recipients were uninsured, and others cited an analysis of 2022 Current Population Survey Annual Social and Economic Supplement data that found that nearly half of individuals likely eligible for DACA are uninsured. Commenters noted that high proportions of DACA recipients reported being unable to pay medical bills. Another commenter noted that while DACA recipients initially realized some health improvements when the 2012 DACA policy was established, that those improvements slowed as uncertainty surrounding the policy grew. Commenters stated that this rule was urgently necessary to help DACA recipients gain access to needed health insurance coverage and close the insurance gap, in line with the goals of the ACA.

One nonprofit organization noted that individuals who would benefit from this rule likely have limited incomes and it is very unlikely that these individuals can afford health insurance. Another commenter cited data showing that in the State of New York, approximately two-thirds of DACA recipients have incomes below 100 percent of the FPL. By gaining access to insurance affordability programs, the commenter noted that this population would have an opportunity to enroll that is currently not available.

Several commenters noted that a significant proportion of DACA recipients are parents, citing estimates ranging from 30 percent to 48 percent of DACA recipients, and noted that 250,000 to 300,000 U.S.-born children have a parent who is a DACA recipient. Commenters cited studies showing that children are more likely to be insured when their parents have health insurance, and that therefore, expanding the health insurance options available to DACA recipients through this rule would also likely improve access to insurance for their children. One commenter noted U.S. citizen children with at least one noncitizen parent are twice as likely to be uninsured as those with two U.S. citizen parents.

Response: We agree with commenters' view that DACA recipients face disproportionately high rates of uninsurance, which has negative downstream health and economic impacts, discussed in further detail below. We believe that no longer barring DACA recipients from accessing health insurance through an Exchange or a BHP will enable previously uninsured DACA recipients to enroll in affordable and quality health insurance coverage and ultimately improve health outcomes for communities that have faced historical inequities.

We note that, in line with 26 U.S.C. 36B(c)(1)(B) and 42 U.S.C. 18071(b)(2), under the policy outlined in this rule, DACA recipients would generally be considered eligible for APTC and CSRs even if their household income is below 100 percent of the FPL, as individuals who are lawfully present but are ineligible for Medicaid due to their "alien status." Under the enhanced subsidies made available through the American Rescue Plan Act and the Inflation Reduction Act, DACA recipients with household incomes up to 150 percent of the FPL would be eligible for zero-dollar premium silver plans, if otherwise eligible for APTC.[58] While we are not finalizing a definition of "lawfully present" for purposes of eligibility for Medicaid or CHIP under the CHIPRA 214 option at this time, we believe that most DACA recipients who may have been eligible for Medicaid or CHIP under the CHIPRA 214 option under our proposed rule will be eligible to enroll in a QHP with generous APTC and CSRs, or in the BHP, under this final rule. Because of this, we believe that this final rule will still decrease rates of uninsurance among DACA recipients.

Finally, we appreciate commenters' illustrations of how this rule may not only increase access to insurance coverage for DACA recipients and other individuals who would be newly considered lawfully present as a result of the final rule, hereinafter "impacted noncitizens," but also for their children. We agree with commenters who noted that addressing the needs of DACA recipients and their families' need for access to affordable health insurance coverage through an Exchange or a BHP is in line with the goals of the ACA.

[58] See Section 9661 of the American Rescue Plan Act of 2021, Public Law 117–2 (March 11, 2021), and Section 12001 of the Inflation Reduction Act of 2022, Public Law 117–169 (August 16, 2022), which established enhanced premium tax credits for Exchange coverage through 2025.

Comment: Some commenters noted the negative impacts of the COVID–19 pandemic on DACA recipients. Commenters provided a range of estimates of the number of DACA recipients working as essential employees during the COVID–19 pandemic. One nonprofit organization cited a study by the Center for American Progress that found that more than three quarters of DACA recipients in the workforce worked in "essential" occupations during the public health emergency, and other commenters cited estimates ranging from around 200,000 to 343,000 workers at the height of the pandemic. Commenters further cited a range of estimates of the number of DACA recipients who worked in health care occupations during the pandemic, ranging from 30,000 to about 45,000. As essential workers, these DACA recipients often put their own and their families' health at risk.

One commenter noted that the COVID–19 pandemic exacerbated deep-seated disparities in health equity, particularly among communities of color, and that systemic barriers have amplified high uninsurance rates and the frequency of postponed medical care among communities of color. Commenters noted that DACA recipients are much more likely than the general population to have coverage through an employer or union. Commenters stated that of those with health insurance, 80 percent of DACA recipients had coverage through an employer or union, as compared to about 50 percent of the general population. As a result, DACA recipients' access to health insurance coverage was very directly tied to their employment status, and losing their job likely meant losing access to health insurance coverage. Commenters cited a 2021 survey of DACA recipients that found that nearly one in five had lost employer health coverage during the COVID–19 pandemic and noted that DACA recipients who lose employer coverage had very limited alternative options for obtaining health insurance coverage.

Response: We agree with the commenters' perspectives on the negative impacts that the COVID–19 pandemic had on DACA recipients, especially as essential workers. Additionally, we recognize the burden that DACA recipients faced when they lost employer-sponsored coverage in the midst of a pandemic. We believe that this rule's change to no longer exclude DACA recipients from the definition of "lawfully present" will enable this population to access health insurance through an Exchange or a BHP, options

that were previously unavailable. We believe that by updating the eligibility requirements for DACA recipients to enroll in a QHP through an Exchange or a BHP, some of the deep-seated disparities in health equity that commenters referenced may be reduced.

Comment: Several commenters encouraged CMS to invest in outreach and to create and maintain partnerships with assisters, who are certified and trusted community partners who provide free and impartial enrollment assistance to consumers (hereinafter "assisters"), and community-based organizations to spread awareness about DACA recipients' access to care. One commenter suggested considering the geographic density of DACA recipients when determining the allocation of marketing resources in media markets.

Some commenters also urged CMS to provide adequate funding to community-based organizations so that they are able to contribute to the important work required to implement this rule. Commenters articulated how community-based organizations have worked for years to build relationships with DACA recipients and urged CMS to leverage these organizations' expertise when implementing this rule to ensure the maximum benefit for consumers. Commenters noted the importance of multilingual materials when conducting outreach and education related to this rule.

A few commenters further noted that targeted outreach is necessary to address DACA recipients' fears that accessing health care coverage and services could negatively affect their immigration status, given persistent fears related to the DHS 2019 public charge rule (84 FR 41292).[59]

Response: We are committed to conducting outreach and education to reach individuals impacted by this rule. We plan to analyze the population impacted by this rule and build strategies and tactics to educate them that they may be eligible for health insurance through an Exchange or a BHP. As noted previously in this final rule, we also plan to leverage existing channels for outreach and education utilized during the individual market Exchange Open Enrollment Period, including multilingual channels, to ensure that impacted noncitizens are aware that they may be newly eligible for coverage. We agree with commenters' view that to ensure maximization of DACA recipients' ability to access coverage, we should partner with assisters and community-based organizations.

Comment: Many commenters detailed how increasing access to health insurance coverage has positive impacts on individual and population health. Many commenters stated that they expected the provisions in the proposed rule would result in increased health and well-being for DACA recipients and other impacted noncitizens and would provide more equitable access to sources of health care on an individual level. Commenters noted that individuals who are insured are more likely to have a regular source of care, to receive timely and appropriate preventive care, and are less likely to experience certain health complications than those who are uninsured. A medical society noted that when uninsurance rates increase, worse health outcomes result at a population level, including reduced prescription adherence and increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children. Similarly, one commenter noted that in States where health benefits are extended to all individuals regardless of immigration status, there are lower rates of foregoing medical, dental, and preventive care at a population level. One commenter noted that expanding access to health insurance coverage is particularly critical as the DACA population ages and faces new and different health challenges.

Response: We appreciate commenters' recognition of the many ways that this rule has the potential to improve health and decrease mortality for impacted noncitizens. While we are unable to quantify these potential impacts, we are hopeful that the coverage gains facilitated by this rule will positively impact the health and wellbeing of DACA recipients and other impacted noncitizens who will be newly considered "lawfully present" as a result of this rule's changes to the "lawfully present" definition for the purposes of eligibility for health insurance through an Exchange or a BHP.

Comment: Some commenters provided detailed analysis of the ways in which increased access to health insurance can contribute to individuals' financial stability. One commenter cited a study that found that when an uninsured individual becomes hospitalized, negative financial outcomes, including reduced access to credit and higher risk of filing for bankruptcy, persist for the following four years. Another commenter mentioned that without consistent access to care, costs of treatment are higher not only for the individual, but for society as a whole.

Some commenters expected that increased access to health insurance would help reduce medical debt for DACA recipients. Commenters noted that individuals with medical debt often have to cut spending on basic necessities. Because medical debt can threaten individuals' food and housing security, it has detrimental effects on social determinants of health associated with adverse health outcomes. Some commenters also noted that medical debt can have significant financial consequences, including having bills going to collections, lower credit scores, bankruptcy, home foreclosures, or evictions. Commenters cited a 2022 survey in which 71 percent of DACA recipient respondents reported being unable to pay medical bills or expenses in the past. Commenters further noted that the financial stability provided by the provisions in this rule may enable DACA recipients to seek education and employment opportunities they may not have otherwise been able to access.

Response: We appreciate commenters' analysis of the many ways that this rule has the potential to improve economic stability for impacted noncitizens. While we are unable to quantify these potential impacts, we are hopeful that the coverage gains facilitated by this rule, via the Exchange or a BHP, will positively impact the financial stability of DACA recipients, other impacted noncitizens and their families.

Comment: Several commenters further outlined how increasing access to health insurance coverage, or extending it to those who are uninsured, has positive impacts not only on individual financial well-being, but also on community-level economic health. One commenter stated that increasing access to affordable health coverage is expected to benefit communities, workforce, education systems, arts and culture, and many sectors of the economy. One commenter noted agreement with CMS' discussion in the proposed rule preamble of the positive impacts that the rule is expected to have on the workforce, given that insured individuals miss 77 percent fewer workdays than those who are uninsured. One nonprofit organization cited studies illustrating that access to affordable coverage allows individuals to spend more disposable income on essential goods and services, which increases tax revenues and produces a "multiplier effect" where increased business revenues benefit both suppliers

[59] In 2022, DHS issued the rule "Public Charge Ground of Inadmissibility" (87 FR 55472), which is applicable to applications for adjustment of status postmarked or electronically filed on or after December 23, 2022; DHS' 2019 Public Charge final rule (84 FR 41292) is no longer applicable.

and employees. This study found that the "multiplier effect" of Medicaid expansion was as much as 1.5 to 2 times as great as the amount of new Federal Medicaid spending. Similarly, one commenter cited a study finding that every $100,000 of additional Medicaid spending resulted in 3.8 net job-years (that is, one job that lasts one year), demonstrating that expanding health benefits creates jobs. One nonprofit organization stated that expanding eligibility for DACA recipients will continue to pay dividends for years to come at the community and national level.

Some members of the Congress, in their public comment, noted that a large portion of DACA recipients are medical and health professional students who will play a critical role in the U.S. health care system in the future, and they deserve the same access to health care. They noted that DACA recipients' access to health care during their education is vital to growing the health care workforce.

Response: We appreciate commenters' analysis of the many ways that this rule has the potential to benefit the economies and other social systems and institutions in impacted noncitizens' communities. We also appreciate the point that ensuring that DACA recipients who are medical and health professional students have access to health insurance coverage during their training is crucial to growing the health care workforce, which benefits communities' health and helps drive down health care costs. While we are unable to quantify these potential benefits, we believe it is reasonable to predict that the improvements in access to health insurance coverage through Exchanges and the BHP that will be facilitated by this rule would produce similar positive impacts to those we have seen with other expansion efforts.

Comment: Many commenters noted that excluding DACA recipients from definitions of "lawfully present" used to determine eligibility for CMS programs contributed to health disparities. Commenters further noted that because more than 90 percent of DACA recipients are Latino, it is likely that the current exclusion of DACA recipients from CMS definitions of "lawfully present" has contributed to disproportionately high uninsurance rates among Latino individuals. Specifically, the commenter cited that Latinos have an uninsurance rate of 18 percent, as compared to 8.4 percent for non-Hispanic whites. Commenters similarly noted persistent disparities in insurance rates between immigrants as compared to U.S. citizens. Commenters noted that while the ACA resulted in larger reductions in the uninsurance rate among Latinos than among any other racial or ethnic population, that DACA recipients have been excluded from these gains. Commenters stated that they expected that this rule would help mitigate these disparities and increase health equity and economic outcomes in the United States. One commenter noted that health disparities related to lack of insurance coverage were highlighted by recent infectious disease outbreaks including COVID–19 and Mpox. In the context of these outbreaks, lack of insurance often resulted in delays in seeking care, which can exacerbate outbreaks and hobble response efforts.

Response: We appreciate commenters' assessments of the ways the current exclusion of DACA recipients from definitions of "lawfully present" can contribute to health disparities, particularly for and within the Latino population. Studies have long demonstrated the impact of health coverage on health outcomes,[60] [61] [62] [63] [64] and the negative health consequences of even relatively short gaps in coverage.[65] Moreover, DACA recipients, with an uninsurance rate of 27 percent, are more than three times more likely to be uninsured than the general U.S. population, which had a national uninsured rate of 7.7 percent.[66] [67]

By including DACA recipients in the definition of "lawfully present" for the purposes of eligibility for health insurance through an Exchange or a BHP, we anticipate DACA recipients will have improved access to coverage through a QHP or BHP which should, in turn, improve consumers' ability to access a range of important health services, thereby improving health outcomes and reducing health disparities for this population.

Comment: Some commenters noted that while DACA recipients who are uninsured face barriers to accessing care that are similar to other uninsured individuals, DACA recipients face additional barriers due to concern that using health care services could negatively affect their own or their family's immigration status. Commenters cited a survey conducted in 2022 that found that nearly half (48 percent) of DACA recipient respondents reported delaying getting needed medical care because of their immigration status. One commenter stated that over 20 percent of DACA recipients were concerned that using health care services would negatively affect their or their family members' immigration status.

One commenter cited polling conducted in 2018 that found one in four Latino voters surveyed (24 percent) had a close family member or friend delay or avoid health care because of fear related to immigration policies, and one in five (19 percent) stated the same about reproductive health care.

Some commenters urged CMS to clarify in this rule and in outreach and education materials that accessing the programs discussed in this rule does not make someone a public charge.

Response: We recognize that some previous governmental policies may have caused people to not seek certain benefits. We note, however, that the DHS public charge policy has now been significantly changed with the publication of the 2022 Public Charge final rule (87 FR 55472). DHS' public charge policy from 2019 (84 FR 41292) has been vacated and is no longer in effect. When developing outreach and education materials related to this rule, we are committed to including content making it clear to DACA recipients and other noncitizens that accessing coverage through an Exchange or a BHP will not impact their grant of DACA, immigration status, or their future ability to adjust their status. Enrolling in

[60] Institute of Medicine (U.S.) Committee on Health Insurance Status and Its Consequences. (2009). *America's uninsured crisis: Consequences for health and health care. https://www.ncbi.nlm.nih.gov/books/NBK214966/* National Academies Press.

[61] Barker AR, Li L. *The cumulative impact of health insurance on health status.* Health Serv Res. 2020 Oct;55 Suppl 2(Suppl 2):815–822. doi: 10.1111/1475–6773.13325.

[62] American Hospital Association. *Report: The Importance of Health Coverage. https://www.aha.org/guidesreports/report-importance-health-coverage#:~:text=Impact%20of%20Coverage&text=Studies%20confirm%20that%20coverage%20improves,on%20individuals%2C%20families%20and%20communities.*

[63] Woolhandler S, Himmelstein, D. 2017, Sept. *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly?* Annals of Internal Medicine. *https://doi.org/10.7326/M17-1403.*

[64] Kaiser Family Foundation. *Key Facts About the Uninsured Population.* (2023). *https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.*

[65] Gabrielle H, Amber G, Dmitry T. 2022; 25:3, 399–406. Short- and Long-Term Health Consequences of Gaps in Health Insurance Coverage among Young Adults. Population Health Management. doi: 10.1089/pop.2021.0211.

[66] National Immigration Law Center. *Tracking DACA Recipients' Access to Health Care* (2023). *https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf.*

[67] U.S. Department of Health and Human Services. *New HHS Report Shows National Uninsured Rate Reached All-Time Low in 2023 After Record-Breaking ACA Enrollment Period* (2023). *https://www.hhs.gov/about/news/2023/08/03/new-hhs-report-shows-national-uninsured-rate-reached-all-time-low-2023-after-record-breaking-aca-enrollment-period.html.*

health insurance through the Exchanges, receipt of APTC or PTC, and CSRs are not considered in a public charge determination in any circumstance.

Comment: One commenter noted that the provisions in this rule will expand access to care for those DACA recipients who may be victims of child abuse, domestic violence, sexual assault, and human trafficking. The commenter noted that DACA recipients who are survivors of family violence and sexual assault may qualify for certain types of immigration relief as survivors of crime and abuse, and that ensuring that these individuals have access to health care providers who can screen for such abuse is critical for both their health and wellbeing and for ensuring that they have access to appropriate immigration relief.

Response: We appreciate this commenter's illustration of how access to health insurance coverage through an Exchange or a BHP may help ensure that DACA recipients and other impacted noncitizens who may have been victims of child abuse, domestic violence, sexual assault, and human trafficking are able to access the immigration benefits for which they may be eligible. We agree that this is yet another illustration supporting the goal of ensuring access to health insurance coverage and health care through an Exchange or a BHP for the underserved and vulnerable noncitizen populations.

Comment: One commenter noted that despite recent expansions of health insurance coverage, low-income Americans still have poor life expectancy outcomes.

Response: We do not agree that disparities in life expectancy rates between low-income and high-income Americans demonstrate that increasing access to health insurance coverage is not a worthwhile endeavor, or that it does not improve health outcomes for low-income populations. On the contrary, as other commenters have pointed out, increasing access to health insurance coverage is associated with improved health outcomes at both the individual and population levels.

Preventive Care

Comment: Many commenters stated that allowing DACA recipients to access QHPs, Medicaid, and CHIP would improve access to preventive care. Commenters noted that QHPs are required to cover certain essential health benefits, which include preventive services such as maternity and newborn care, contraception, and certain cancer screenings. Commenters cited studies finding that insured individuals are more likely to access preventive care for major health conditions and chronic diseases, including cancer.

One commenter noted that while DACA recipients may be able to access certain safety-net health care providers if they do not have insurance, expanding access to comprehensive health insurance coverage will result in better individual and community health outcomes. Commenters further noted that many of the safety net providers that uninsured DACA recipients may rely on often have limited resources and capacity.

Response: We appreciate commenters' detailed analysis of the many ways in which this rule will, hy increasing access to health insurance through an Exchange or a BHP, improve impacted noncitizens' ability to access critical preventive care. We agree with commenters' perspectives that having health insurance coverage should improve consumers' ability to access a range of important health services and, in turn, improve health outcomes and reduce health disparities for this population. While we acknowledge that some of the studies that commenters cited referred specifically to the benefits of Medicaid coverage, many of the studies cited pertained to the benefits of QHP coverage or health insurance coverage more generally, and we expect that this rule will result in increased access to preventive care for DACA recipients and other impacted noncitizens through Exchanges and the BHP. Comments pertaining to the potential health benefits of Medicaid and CHIP coverage specifically will be addressed in future rulemaking.

We also appreciate commenters' illustration of how lack of access to preventive care can increase strain on the health care system. While safety net providers are an important source of care for uninsured individuals, helping more people access coverage that enables them to utilize a fuller range of providers both improves health outcomes and reduces the strain on safety-net provider resources.

Comment: Some commenters stated that the provisions in this rule will expand access to sexual and reproductive health care and women's health care services for DACA recipients. Commenters noted that the need for such services is high among DACA recipients, 53 percent of whom are women and the majority of whom are of reproductive age. Commenters detailed gaps in access to sexual and reproductive health care for noncitizens; one commenter cited a study that found that one in five noncitizens had not seen sexual and reproductive health services provider in the past year and that 30 percent had not had a Papanicolaou (Pap) test in the past 3 years. One commenter noted that uninsured pregnant individuals receive fewer prenatal care visits and have increased rates of harmful maternal and fetal outcomes.

A few commenters noted that women who are immigrants experience higher breast and cervical cancer incidence and mortality rates and lower screening rates compared to U.S.-born women, and that lack of health insurance coverage is associated with more advanced-stage cancer diagnoses. Commenters stated that they expected this rule would help mitigate existing racial and ethnic disparities related to sexual and reproductive health care outcomes.

A few commenters further noted that QHPs are required to cover a range of sexual and reproductive health care services without cost-sharing, including well-woman visits, contraceptive services, and breast and cervical cancer screenings.

A few commenters noted the importance of expanding access to sexual and reproductive health care services in light of the Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215 (2022), which overturned *Roe* v. *Wade, 410 U.S. 113 (1973)* and *Planned Parenthood of Southeastern Pennsylvania* v. *Casey 505 U.S. 833 (1992)*. One commenter noted that in 2022, nearly 40 percent of the Latina women who lived in States that were likely to ban abortion were born outside of the United States, and that this group likely includes many DACA recipients.

Response: We acknowledge commenters' notes on the importance of expanding access to sexual and reproductive health care services, and we agree that it is critically important to close gaps in access to insurance coverage and care and to drive down existing disparities in sexual and reproductive health and improve maternal and child health outcomes.

We agree with commenters' perspectives that insurance coverage provides enrollees with access to a range of reproductive health services to the benefit of their own and their families' health and financial security. We believe this rule will result in increased access to sexual and reproductive health care for previously uninsured DACA recipients and other impacted noncitizens by increasing coverage through Exchanges and the BHP.

Comment: Some commenters noted that the rule would meaningfully expand access to mental and behavioral

health care services for DACA recipients. Commenters stated that the need for mental health care services is high among DACA recipients, who may experience feelings of depression, anxiety, and fear related to the future of their immigration status. Commenters cited a 2022 survey in which 48 percent of DACA recipient respondents indicated they were not receiving any health care services for their mental or behavioral health issues. Commenters stated that expanding access to health insurance coverage for DACA recipients would likely improve DACA recipients' mental and behavioral health outcomes. One nonprofit organization noted that access to behavioral health services is protective against intimate partner violence, child abuse and neglect, and suicidality. Another commenter mentioned that a 2022 survey found that half of DACA recipients who were uninsured wanted to access mental health services but were not doing so because of the associated cost.

Response: We appreciate commenters' description of the many ways in which allowing DACA recipients and other impacted noncitizens to access health insurance is expected to promote access to mental and behavioral health care services and to improve health care outcomes. We expect that this rule will result in increased access to mental and behavioral health services for DACA recipients and other impacted noncitizens by increasing coverage through Exchanges and the BHP.

Emergency Care

Comment: Several commenters suggested that the final rule will help shift health care visits made by noncitizens from emergency department (ED) care to preventive care. Commenters noted that uninsured individuals may delay or avoid seeking vital care, which can result in needing to utilize a hospital ED. Commenters further noted that uninsured individuals are more likely to seek care both non-emergency care and emergency care in a hospital ED, where they often receive more costly care, fewer services, and have higher mortality rates compared to individuals with insurance or individuals who routinely seek preventive care. Additionally, commenters noted that routine ED visits have the potential to divert resources from patients with more urgent health needs. A few commenters noted that visits to the ED by uninsured individuals are often more costly than preventive care visits and institutions often absorb the cost for uninsured individuals. Commenters suggested that by providing DACA recipients with more health insurance options, ED costs can shift from institutions to insured individuals, which can ultimately reduce costs to taxpayers. Commenters expressed their belief that expanding coverage to DACA recipients would promote a more efficient health care system. Commenters further suggested that the proposed rule would help decrease the amount of uncompensated care that EDs provide and would help maintain the emergency care safety net by mitigating existing financial risks. One commenter noted that emergency care providers face unique costs related to staffing EDs 24 hours per day, 7 days per week. The commenter further stated that by lessening barriers to enrollment in health insurance programs, uncompensated care costs could decline, leading to better financial sustainability for emergency care safety net providers.

Response: We appreciate commenters' analysis of the many ways in which this rule will shift the opportunity for impacted noncitizens to seek health care from EDs to more comprehensive health care that includes preventive care. Uninsured populations are more likely than those who are insured to postpone seeking care due to cost, which can increase the complexity and cost of care that they eventually require.[68] We agree with commenters' analysis that emergency care tends to be more costly and complex and that this rule could help decrease the amount of uncompensated care that EDs provide which could lead to better financial sustainability for emergency care safety net providers.[69] [70]

We agree with commenters who pointed out that uninsured individuals might delay seeking vital care, which can result in ED use. We are hopeful that expanding access to QHPs and the BHP to previously uninsured DACA recipients and other impacted noncitizens may similarly drive down emergency department use. As noted by commenters, we believe this rule could promote a lower cost and more efficient health care system by reducing high-cost emergency care, increasing lower-cost preventive care, and ultimately decreasing the number of DACA recipients and other impacted noncitizens who qualify only for the treatment of an emergency medical condition under Medicaid due to their immigration status, rather than more comprehensive coverage that may be available through the Exchange or a BHP.

After thorough consideration of public comments, we are finalizing the inclusion of DACA recipients in the definition of "lawfully present" at 45 CFR 155.20(9) as proposed.

Out of Scope

Comment: Several commenters stated general opposition to the current administration for its handling of both immigration and health care policy and reform, but without referring to the proposed rule at all. Some commenters stated direct opposition to specific political parties, and some stated they believe that this rule is a political maneuver to garner votes.

Response: We appreciate these comments but note that these comments are out of scope as related to the provisions laid out in this rule and no response is required.

Comment: Some commenters shared perspectives on DACA recipients' contributions to the workforce and economy and requests to create pathways for citizenship.

Response: We appreciate these comments. This rule does not address the DACA policy itself, only the eligibility of DACA recipients for coverage under an Exchange or BHP. While these comments are related to the DACA policy broadly, they do not seek to support or change specific provisions set forth in the proposed rule and no response is required.

Comment: Multiple commenters shared the challenges they faced seeking affordable health insurance, including as small business owners or low-income families, without referring to the substance of this rulemaking. Many commenters proposed other changes to the United States health care system or to other benefit programs such as the Supplemental Nutrition Assistance Program (SNAP).

Response: We appreciate these comments and note commenter concerns and requests, but these topics are out of scope for this final rule.

Comment: One public health system provider stated that they supported the rule's measures to enhance consumer protections, such as establishing an appeals process and extending the grace period for premium payments,

[68] Kaiser Family Foundation. *Key Facts About the Uninsured Population* (2023) *https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.*

[69] United Health Group. *18 Million Avoidable Hospital Emergency Department Visits Add $32 Billion in Costs to the Health Care System Each Year.* (2019) *https://www.unitedhealthgroup.com/content/dam/UHG/PDF/2019/UHG-Avoidable-ED-Visits.pdf.*

[70] Center on Budget and Policy Priorities. *Uncompensated Care Costs Fell in Nearly Every State as ACA's Major Coverage Provisions Took Effect.* (2018) *https://www.cbpp.org/research/health/uncompensated-care-costs-fell-in-nearly-every-state-as-acas-major-coverage.*

safeguarding the rights of consumers who face unforeseen circumstances.

Response: We appreciate this comment but there were no specific proposals about an appeals process, grace periods for premium payments, or rights of consumers in unforeseen circumstances, so the comment is outside the scope of this rulemaking and no response is required.

2. Other Changes to the "Lawfully Present" Definition

In addition to including DACA recipients in the definition of "lawfully present" for the purposes of eligibility to enroll in a QHP through an Exchange and a BHP, we proposed several other clarifications and technical adjustments to the definition proposed at 45 CFR 155.20, as compared to the definition currently at 45 CFR 152.2.

First, in paragraph (1) of the proposed definition of "lawfully present" at 45 CFR 155.20, we proposed some revisions as compared to paragraph (1) of the definition currently at 45 CFR 152.2. In the current regulations at 45 CFR 152.2, paragraph (1) provides that qualified aliens, as defined in the PRWORA at 8 U.S.C. 1641, are lawfully present. Throughout the proposed definition at 45 CFR 155.20, we proposed a nomenclature change to use the term "noncitizen" instead of "alien" when appropriate to align with more modern terminology. Additionally, in paragraph (1) of the proposed definition at 45 CFR 155.20, we proposed to cite the definition of "qualified noncitizen" at 42 CFR 435.4, rather than the definition of "qualified alien" in PRWORA. The definition of "qualified noncitizen" currently at 42 CFR 435.4 includes the term "qualified alien" as defined at 8 U.S.C. 1641(b) and (c).

We noted in the preamble of the proposed rule that for purposes of Exchange coverage and APTC eligibility, citizens of the Freely Associated States (FAS) living in the United States under the Compacts of Free Association (COFA), commonly referred to as COFA migrants, were not considered qualified noncitizens because the statutory provision at 8 U.S.C. 1641(b)(8) making such individuals qualified noncitizens only applied with respect to the Medicaid program (88 FR 25317). Instead, COFA migrants were considered lawfully present under a different category, 45 CFR 152.2(2), that applied to noncitizens in a valid nonimmigrant status. After the proposed rule was issued, the Congress amended 8 U.S.C. 1641(b)(8) to eliminate the language restricting COFA migrants as qualified noncitizens only for purposes of the Medicaid program. The CAA, 2024,[71] effective March 9, 2024, recognizes that COFA migrants would be qualified noncitizens, and, therefore, lawfully present for the purposes of our regulation as qualified noncitizens at 45 CFR 152.2(1). COFA migrants will be considered lawfully present based on both sections 155.20(1) and 155.20(2) of this final rule.

In section II.D.2 of the proposed rule, we discussed whether to provide a more detailed definition of "qualified noncitizen" at 42 CFR 435.4. Pending such comments, and to ensure alignment across our programs, we proposed that the Exchange regulations at 45 CFR 155.20 define "qualified noncitizen" by including a citation to the Medicaid regulations at 42 CFR 435.4, rather than to PRWORA.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: Commenters supported this proposal, noting that it aligned with CMS' effort to replace instances of "alien" in its current regulatory definition of "lawfully present" with "noncitizen."

Response: We appreciate commenters' support for this proposal and note that no comments opposed this proposal. We understand that the term "alien" is outdated and has been ascribed with a negative, dehumanizing connotation, and we agree with commenters that the proposal to cross-reference the definition of "qualified noncitizen" at 42 CFR 435.4 aligns with our efforts to replace the term "alien" with "noncitizen" in our regulations. This is also consistent with DHS' replacement of the term "alien" with "noncitizen" wherever possible. Given that we are finalizing a more detailed definition of "qualified noncitizen" at 42 CFR 435.4, CMS also believes that providing this cross-reference helps to promote transparency and maintain consistency across programs.

Comment: One commenter noted that they supported cross-referencing to DHS regulations to the extent that it clarifies definitions and verifications but did not support cross-referencing if there is potential that the cross-reference changes the HHS definition of "lawfully present." The commenter stated that it should be made clear in any phrasing surrounding the cross-reference that DHS defines and regulates immigration statuses, which HHS uses and references, but that "lawful presence" for the purpose of HHS regulation is determined by HHS, not DHS.

Response: We generally agree with the commenter. We wish to clarify that we are not cross-referencing DHS' definition of "lawfully present" at 8 CFR 1.3 in the final rule. After considering public comments, we are adopting our own regulatory definition of "lawfully present" for purposes of eligibility to enroll in a QHP through an Exchange and the BHP.

After consideration of public comments, we are finalizing 45 CFR 155.20(1), which cross-references the definition of "qualified noncitizen" at 42 CFR 435.4, as proposed.

In the current definition of "lawfully present" at 45 CFR 152.2, we include in paragraph (2), a noncitizen in a nonimmigrant status who has not violated the terms of the status under which they were admitted or the status to which they have changed since their admission. In the proposed rule, we proposed, in paragraph (2) of 45 CFR 155.20, to modify this language such that a noncitizen in a valid nonimmigrant status would be deemed lawfully present. We noted that determining whether an individual has violated the terms of their status is a responsibility of DHS, not CMS or States. Accordingly, as proposed, the change would ensure coverage of noncitizens in a nonimmigrant status that has not expired, as long as DHS has not determined those noncitizens have violated their status.

Under the proposed change, Exchanges and BHPs would continue to submit requests to verify an applicant's nonimmigrant status through a data match with DHS via the Hub using DHS' Systematic Alien Verification for Entitlements (SAVE) system. If SAVE indicated that the applicant did not have an eligible immigration status, the applicant would not be eligible for coverage. This modification will simplify the eligibility verification process, so that a nonimmigrant's immigration status can be verified solely using the existing SAVE process, which can often provide verification in real time when an application is submitted and reduce the number of individuals for whom an Exchange or a BHP may need to request additional information. We note that this change will promote simplicity, consistency in program administration, and program integrity given the reliance on a Federal trusted data source, while eliminating the agency's responsibility to understand and evaluate the complexities of the various immigration statuses and regulations.

We received public comments on this proposal. The following is a summary of

[71] Div G, Title II, sec. 209(f), Public Law 118–42 (March 9, 2024).

the comments we received and our responses.

Comment: We received several comments in support of this change, with commenters noting that the existing language regarding whether a nonimmigrant has violated the terms of their status is confusing and that the changes proposed to this regulation will promote efficiency and consistency in eligibility determinations and verification processes. Commenters further noted that this would clarify that an individual's nonimmigrant status can be verified through DHS SAVE, streamlining eligibility verification processes and promoting program administration and integrity through alignment with DHS processes.

Response: We appreciate commenters' perspectives on this proposal and agree that the wording changes will promote more efficient and consistent eligibility determinations.

Comment: One commenter noted that CMS' proposal to adjust the language regarding nonimmigrant visa-holders to remove language relating to nonimmigrants not having violated the terms of their status would streamline eligibility determinations and verifications for COFA migrants who are otherwise eligible for Exchange coverage. Commenters stated that they supported proposed changes that would enable migrants under the COFA who are lawfully present as "nonimmigrants" to enroll in Exchange coverage.

Response: We appreciate commenters' feedback on how this change may streamline immigration status verifications and benefit eligibility determinations for COFA migrants, who are and will continue to be considered "lawfully present" for purposes of health insurance coverage through an Exchange or a BHP as addressed in this rule, as COFA migrants are nonimmigrants under current regulations at 42 CFR 152.2(2), and are both qualified noncitizens and nonimmigrants under the provisions finalized in this rule at 45 CFR 155.20(1) and (2), respectively. We agree that the change to remove language regarding whether a nonimmigrant has violated the terms of their status will streamline the eligibility and enrollment process for COFA migrants and other nonimmigrants, increasing access to health insurance through an Exchange or a BHP.

We wish to further clarify that under our existing regulations, COFA migrants are considered "lawfully present" by virtue of their nonimmigrant status and are therefore currently eligible to enroll in a QHP or BHP. While the changes in this rule may provide additional clarity for COFA migrants and streamline the ability of CMS to verify their immigration status and determine benefit eligibility, nothing in this rule changes whether COFA migrants are considered eligible for the insurance affordability programs addressed in this rule.

After consideration of public comments, we are finalizing 45 CFR 155.20(2), pertaining to noncitizens in a valid nonimmigrant status, as proposed.

We proposed a minor technical change in paragraph (4) of the proposed definition of "lawfully present" at 45 CFR 155.20, as compared to the definition of "lawfully present" currently in paragraph (4)(i) of 45 CFR 152.2, to refer to individuals who are "granted," rather than "currently in" temporary resident status, as this language more accurately refers to how this status is conferred. We similarly proposed a minor technical change in paragraph (5) of the proposed definition of "lawfully present" at 45 CFR 155.20, as compared to the definition of "lawfully present" currently in paragraph (4)(ii) of 45 CFR 152.2, to refer to individuals who are "granted," rather than "currently under" Temporary Protected Status (TPS), as this language more accurately refers to how DHS confers this temporary status upon individuals.

We did not receive public comments on these provisions, and therefore, we are finalizing 45 CFR 155.20(4) and 45 CFR 155.20(5) as proposed.

Paragraph (4)(iii) of the current definition at 45 CFR 152.2 provides that noncitizens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24) are considered lawfully present. In paragraph (6) of the proposed definition of "lawfully present" at 45 CFR 155.20, we proposed to cross reference 8 CFR 274a.12(c) in its entirety to simplify the regulatory definition and verification process. We proposed this modification to the regulatory text to include all noncitizens who have been granted employment authorization under 8 CFR 274a.12(c), as USCIS has authorized these noncitizens to accept employment in the United States. USCIS may grant noncitizens employment authorization under this regulatory provision based on the noncitizen's underlying immigration status or category, an application for such status or other immigration relief, or other basis. Almost all noncitizens granted employment authorization under 8 CFR 274a.12(c) are already considered lawfully present under existing regulations, either in paragraph (4)(iii) of the definition at 45 CFR 152.2 or within 45 CFR 152.2 more broadly. We noted in the proposed rule that this modification would add two minor categories to the proposed definition: noncitizens granted employment authorization under 8 CFR 274a.12(c)(35) and (36). Individuals covered under 8 CFR 274a.12(c)(35) and (36) are noncitizens with certain approved employment-based immigrant visa petitions who are transitioning from an employment-based nonimmigrant status to lawful permanent resident (LPR) status and their spouses and children, for whom immigrant visa numbers are not yet available. These categories act as a "bridge" to allow these noncitizens to maintain employment authorization after their nonimmigrant status expires while they await an immigrant visa to become available. Because these individuals were previously eligible for insurance programs hy virtue of their nonimmigrant status, the proposed rule would simply allow their eligibility to continue until they are eligible to apply to adjust to LPR status.

This change to consider "lawfully present" all individuals with employment authorization under 8 CFR 274a.12(c) is beneficial because Exchanges and BHPs can verify that an individual has been granted employment authorization under 8 CFR 274a.12(c) in real time through SAVE, at the initial step of the verification process. Thus, the proposed revision to the definition will help to streamline and expedite verification of status for individuals who have been granted employment authorization under this regulatory provision.

Further, to reduce duplication and confusion, we proposed to remove the clause currently in paragraph (4)(ii) of the definition at 45 CFR 152.2, referring to "pending applicants for TPS who have heen granted employment authorization," as these individuals would he covered under proposed paragraph (6) of the definition of "lawfully present" at 45 CFR 155.20.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: We received several comments in support of this change, with commenters agreeing that all individuals granted employment authorization under 8 CFR 274a.12(c) should be considered lawfully preseot, and that this change should simplify verification of lawful presence for impacted consumers.

Response: We appreciate commenters' feedback and agree that this

modification will simplify the agency's benefit eligibility determinations and verification of lawful presence for individuals granted employment authorization.

Comment: One commenter encouraged CMS to consider all individuals who are eligible to apply for employment authorization as "lawfully present" for the purposes of the programs addressed in this rule. The commenter suggested that a noncitizen's lawful presence should not depend on whether they have been granted employment authorization, as eligibility for employment authorization should signify lawful presence regardless of whether employment authorization has actually been granted. The commenter noted that considering individuals who are eligible for employment authorization would reduce administrative burden on eligibility determination agencies by no longer requiring agencies to determine whether an individual had applied for employment authorization and how long their application had been pending. The commenter noted that the current requirement to obtain employment authorization imposes burdens on individuals who may not otherwise need employment authorization, such as children and individuals with disabilities, who may also face accessibility barriers when applying for employment authorization. The commenter also pointed out that low-income noncitizens may not be able to afford the fees required to apply for and obtain employment authorization, and that the waiting periods required before certain noncitizens can obtain employment authorization result in coverage and care delays.

Response: We believe that the authority to determine whether an individual is eligible to apply for employment authorization rests with DHS, not CMS, Exchanges, or BHP agencies. We do not believe that it is appropriate or possible for Exchanges or BHP agencies to evaluate whether someone may be eligible to apply for employment authorization. We outline elsewhere in the rule why it is not appropriate for CMS, Exchanges, or BHP agencies to evaluate whether a nonimmigrant has violated the terms of their status, and that this is within DHS' purview. We believe that evaluating an individual's eligibility to apply for employment authorization is similarly within DHS' purview.

Additionally, we do not agree that including individuals who are eligible to apply for employment authorization, but have not been granted employment authorization, in our definitions of "lawfully present" would reduce administrative burden. Requestors are not able to verify through SAVE whether an individual is eligible to apply for employment authorization in the same way that they can verify that an individual has been granted employment authorization through the SAVE system, which can be provided as a real-time step 1 response. Therefore, verifying that an individual is eligible to apply for employment authorization would require CMS, Exchanges, and BHP agencies to develop complex manual processes to evaluate eligibility on this basis.

Furthermore, while having employment authorization can help facilitate verification, as we discussed above, virtually all noncitizens eligible for employment authorization under 8 CFR 274a.12(c) are already lawfully present because of their underlying immigration category (*e.g.*, deferred action), whether or not they obtain employment authorization. That underlying category can be determined for purposes of eligibility for the CMS programs, without the additional significant complexity of further trying to determine whether the noncitizen's category authorized them to apply for employment authorization on a case-by-case basis, and then trying to verify that. Therefore, this suggestion would add little substantive value in terms of actual expanded access to these programs, compared to the significant burden of trying to implement it by revising our definitions of "lawfully present" for purposes of health insurance through an Exchange or a BHP. While we have the authority to define "lawfully present" for the purposes of our programs, we also intend to codify a definition of "lawfully present" that is aligned with DHS' conceptions of lawful presence as articulated at 8 CFR 1.3 to the extent practicable and appropriate for our programs, given DHS' deep expertise in this area.

For these reasons, we are not finalizing a provision to include individuals who are eligible to apply for employment authorization in CMS definitions of "lawfully present."

Comment: One commenter stated that CMS' proposal ran counter to the Congress's statutory scheme because the proposal considers noncitizens who are granted employment authorization under 8 CFR 274a.12(c) to be "lawfully present." The commenter noted that the Congress's definition of a "qualified alien" does not depend on whether an individual has been granted employment authorization by DHS. The commenter further noted that a grant of employment authorization does not confer lawful presence under either the INA or PRWORA, and that CMS' proposal is therefore contrary to law and should be withdrawn.

Response: As previously stated, we are required under the ACA to consider individuals who are "lawfully present" as eligible to enroll in a QHP or a BHP, and the ACA, like the INA and PRWORA, does not provide a definition of "lawfully present."

We agree that a grant of employment authorization does not result in an individual being considered a "qualified alien" under 8 U.S.C. 1641(b) or (c). However, we are not proposing in this rule that an individual should be considered a "qualified alien" if they are granted employment authorization under 8 CFR 274a.12(c). Eligibility for enrollment in a QHP and for APTC and CSRs as well as BHP does not depend entirely on whether an individual is a "qualified alien" under PRWORA. This issue is discussed in further detail later in this section.

We are acting consistent with our statutory authority by codifying a regulatory definition of "lawfully present"' for use in determining eligibility for QHP and BHP coverage. We note that individuals granted employment authorization under 8 CFR 274a.12(c) are permitted to accept employment because DHS has determined that the individual has an immigration status or category that qualifies them for employment authorization under this subsection. Thus, we believe it is appropriate to include all individuals with such employment authorization because DHS has made an affirmative determination that the individual has an underlying immigration status or category that authorizes them to work legally in the United States.

After consideration of public comments, we are finalizing the proposal at 45 CFR 155.20(6) to consider individuals granted employment authorization under 8 CFR 274a.12(c) as lawfully present, as proposed.

We proposed a minor technical modification to the citation in paragraph (7) of the definition of "lawfully present" to describe Family Unity beneficiaries more accurately. Family Unity beneficiaries are individuals who entered the United States, have been continuously residing in the United States since May 1988, and who have a family relationship (spouse or child) to a noncitizen with "legalized status."[72]

[72] See USCIS Form I–817 (Application for Family Unity Benefits) and Instructions available at *https://*

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The current definition of "lawfully present" at 45 CFR 152.2 includes Family Unity beneficiaries eligible under section 301 of the Immigration Act of 1990 (Pub. L. 101–649, enacted November 29, 1990), as amended. However, DHS also considers as Family Unity beneficiaries individuals who are granted benefits under section 1504 of the Legal Immigration and Family Equity (LIFE) Act Amendments of 2000 (enacted by reference in Pub. L. 106–554, enacted December 21, 2000, referred to hereinafter as the LIFE Act Amendments). In the proposed rule, we proposed to amend the "lawfully present" definition to include individuals who are granted benefits under section 1504 of the LIFE Act Amendments for consistency with DHS' policy to consider such individuals Family Unity beneficiaries.

We did not receive public comments on this provision, and therefore, we are finalizing 45 CFR 155.20(7) as proposed.

As discussed previously, in paragraph (9) of the proposed definition of "lawfully present" at 45 CFR 155.20, we proposed an additional clause clarifying that all recipients of deferred action, including DACA recipients, are lawfully present for purposes of 45 CFR part 155, which concerns eligibility to enroll in a QHP through an Exchange, and by cross-reference at 42 CFR 600.5, eligibility for a BHP. Please see section II.B.1 for a detailed discussion of the comments we received on this proposal.

In paragraph (10) of the proposed definition of "lawfully present" at 45 CFR 155.20, we proposed to clarify that individuals with a pending application for adjustment of status to LPR are not required to have an approved immigrant visa petition to be considered lawfully present. We proposed this change because in some circumstances, DHS does not require a noncitizen to have an approved immigrant visa petition to apply for adjustment of status. For example, USCIS allows noncitizens in some employment-based categories, as well as immediate relatives of U.S. citizens, to concurrently file a visa petition with an application for adjustment of status. Further, there are some scenarios where individuals need not have an approved visa petition at all, such as individuals applying for adjustment of status under the Cuban Adjustment Act. In addition, the SAVE verification system generally does not currently return information to requestors on the status of underlying immigrant visa petitions associated with the adjustment of status response. As proposed, the modification would simplify verification for these noncitizens, reduce the burden on States and individual applicants, and align with current DHS procedures.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: We received several comments in support of this change, with commenters noting that the existing requirement that individuals with a pending application for adjustment of status also have an approved visa petition unnecessarily includes family-based and other immigrants who are not required to have an approved visa petition when they apply to adjust their status. Commenters also noted that the proposed simplification will simplify eligibility verification processes, reduce administrative burden, and align with DHS procedures.

Response: We agree that the current requirement that individuals with a pending application for adjustment of status also have an approved visa petition does not align with DHS policy or practice and believe that lifting this requirement will simplify verification of lawful presence for these consumers. We received no comments opposing this proposal.

After consideration of public comments, we are finalizing 45 CFR 155.20(10) as proposed.

Paragraph (5) of the current definition of "lawfully present" pertains to applicants for asylum, withholding of removal, or protection under the regulations implementing U.S. obligations under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter "CAT"). In the proposed rule, we proposed to move this text to paragraph (12) of the definition of "lawfully present" at 45 CFR 155.20, and remove the portion of the text pertaining to noncitizens age 14 and older who have been granted employment authorization, as these individuals are noncitizens granted employment authorization under 8 CFR 274a.12(c)(8), and as such, are included in paragraph (6) of our proposed definition of "lawfully present" at 45 CFR 155.20. We noted that the proposed change was intended to reduce duplication and would not have a substantive impact on the definition of "lawfully present."

We further proposed to remove the requirement in the current definition that individuals under age 14 who have filed an application for asylum, withholding of removal, or protection under CAT have had their application pending for 180 days to be deemed lawfully present. We originally included this 180-day waiting period for children under 14 in our definition of "lawfully present" to align with the statutory waiting period before applicants for asylum and other related forms of protection can be granted employment authorization. We proposed to change this so that children under 14 are considered lawfully present without linking their eligibility to the 180-day waiting period for employment authorization. We noted in the proposed rule that children under age 14 generally are not permitted to work in the United States under the Fair Labor Standards Act,[73] and therefore, the employment authorization waiting period has no direct nexus to their eligibility for coverage. Under the proposed rule, Exchanges and States would continue to verify that a child has the relevant pending application or is listed as a dependent on a parent's[74] pending application for asylum or related protection using DHS' SAVE system. As proposed, the modification captures the same population of children that was previously covered as lawfully present, without respect to how long their applications have been pending.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: We received several comments in support of this change, with commenters supporting CMS' proposal to no longer require children under the age of 14 who are applicants for asylum, withholding of removal, or protection under CAT, to have had their application pending for 180 days before they can be considered "lawfully present" under CMS regulations. Commenters agreed with CMS' reasoning that while this waiting period was initially meant to parallel the amount of time an applicant must wait before pursuing employment authorization based on a pending asylum application, the waiting period held little significance for children who generally are not legally able to work and presented an unnecessary barrier to health coverage access.

Commenters further cited significant physical and mental health care needs faced by children seeking asylum or humanitarian protection. Commenters cited studies finding that as many as 64 percent of child asylum seekers are

www.uscis.gov/sites/default/files/document/forms/i-817.pdf and *https://www.uscis.gov/sites/default/files/document/forms/i-817instr.pdf.*

[73] See 29 CFR 570.2.

[74] See 8 U.S.C. 1101(b)(2) (definition of "parent").

diagnosed with post-traumatic stress disorder (PTSD), as many as 75 percent of child asylum applicants are suspected or diagnosed to have at least one significant mental health diagnosis, and children seeking asylum experience delays in obtaining basic preventive medical care like vaccines.

Response: We agree with commenters that, in the context of eligibility for Exchange and BHP coverage, the 180-day waiting period for individuals who are lawfully present based on an application for asylum, withholding of removal, or protection under CAT, is not significant for children under the age of 14 because they would generally not be permitted to work in the United States. We agree with commenters that the 180-day waiting period could delay access to health coverage and care for this population.

Comment: Some commenters further urged CMS to eliminate the requirement that applicants for asylum, withholding of removal, or protection under CAT who are age 14 and older obtain employment authorization to be considered lawfully present. Commenters noted that these applicants for humanitarian relief often have significant physical and mental health needs, and that eliminating this requirement would have a positive impact on access to health care, primarily for children and pregnant individuals. Commenters noted that this change could help reduce barriers for individuals who already may have limited access to Exchange coverage due to requirements to commit to filing a Federal income tax return and to project their income based on limited or no work experience.

Response: We understand that some individuals who are age 14 and older obtain employment authorization for purposes beyond employment, such as for identification purposes. We are taking more time to evaluate and consider comments suggesting that the age at which applicants for these forms of humanitarian protection are required to have employment authorization be raised or eliminated. Specifically, we are evaluating the potential impacts of a change to the age 14 requirement—as raised by commenters—on these applicants and on program integrity. The rulemaking process with regard to that portion of the proposal is ongoing. As a result, we are not finalizing any change to the age 14 requirement at this time.

After consideration of public comments, we are finalizing the proposal at 45 CFR 155.20(12) to no longer require children under the age of 14 who are applicants for asylum, withholding of removal, or protection under CAT to have had their application pending for 180 days before they can be considered "lawfully present," as proposed.

In paragraph (13) of the proposed definition of "lawfully present" at 45 CFR 155.20, we proposed to include individuals with an approved petition for Special Immigrant Juvenile (SIJ) classification. The definition currently at paragraph (7) of 45 CFR 152.2 refers imprecisely to noncitizens with a "pending application for [SIJ] status" and therefore unintentionally excludes from the definition of "lawfully present," children whose petitions for SIJ classification have been approved but who cannot yet apply for adjustment of status due to lack of an available visa number.[75] Due to high demand for visas in this category, for many SIJ-classified noncitizens, it can take several years for a visa number to become available. SIJs are an extremely vulnerable population and as such, we proposed to close this unintentional gap so that all children with an approved petition for SIJ classification are deemed lawfully present.

In May 2022, USCIS began considering granting deferred action to noncitizens with approved petitions for SIJ classification but who are unable to apply for adjustment of status solely due to unavailable immigrant visa numbers.[76] Accordingly, based on the proposed changes at 45 CFR 155.20, SIJs could be considered "lawfully present" under three possible categories, as applicable: paragraph (9), deferred action; paragraph (10), a pending adjustment of status application; or paragraph (13), a pending or approved SIJ petition. While proposed paragraph (9) would cover individuals with approved SIJ petitions who cannot yet apply for adjustment of status, there may be a small number of SIJs with approved petitions who have not yet been considered for deferred action or for whom USCIS has declined to defer action. The proposed modification to paragraph (13) of the definition of "lawfully present" at 45 CFR 155.20 would capture individuals who have petitioned for or established eligibility for SIJ classification but do not qualify under paragraph (9) or (10) of the proposed definition of "lawfully present" at 45 CFR 155.20 and eliminate an unintentional gap in the definition.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: CMS received several comments in support of this change, with commenters noting that SIJs are extremely vulnerable children and that updating this policy will correct the unintentional exclusion of individuals with an approved SIJ petition who have not yet been able to adjust to lawful permanent resident status and who are not otherwise covered under CMS definitions of lawfully present. Commenters noted that these children tend to have profound mental health needs. Commenters further noted that this change will streamline eligibility verifications for impacted individuals.

Response: We agree with commenters that the current exclusion of certain individuals with an approved SIJ petition from our regulatory definitions is unintentional, and that this change will ensure that vulnerable children do not face unnecessary barriers to accessing health insurance coverage.

After consideration of public comments, we are finalizing 45 CFR 155.20(13) as proposed.

We also proposed a nomenclature change to the definitions currently at 45 CFR 152.2 to use the term "noncitizen," rather than "alien" in the definition proposed at 45 CFR 155.20 to align with more modern terminology. Public comments on this proposal are discussed earlier in this section. After consideration of public comments, we are finalizing these nomenclature changes as proposed.

We received general comments on the clarifications and technical adjustments to the definition of "lawfully present" at 45 CFR 155.20. The following is a summary of the comments we received and our response.

Comment: Many commenters stated general support for CMS' proposals to make technical corrections further clarifying the definition of "lawfully present" for other noncitizens, for purposes of these programs.

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[75] Moreover, SIJ classification is not itself a status and should not be described as such in the regulation. The current regulatory reference to a "pending application for SIJ status" has been construed to encompass noncitizens with a pending SIJ petition. It is not limited to noncitizens with a pending application for adjustment of status based on an approved SIJ petition. Therefore, the proposed regulatory change does not modify the current practice of determining lawful presence for noncitizens in the SIJ process based on a pending petition, rather than based on a pending adjustment application (as with other categories of noncitizens seeking LPR status). The modification we proposed instead clarifies the language so that both pending and approved SIJ petitions convey lawful presence for the purposes of eligibility for health insurance coverage through an Exchange or BHP, whether or not an individual with an approved SIJ petition has an adjustment application pending.

[76] U.S. Citizenship and Immigration Services. *Policy Alert: Special Immigrant Juvenile Classification and Deferred Action.* (2022). *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf.*

Commenters stated that the proposed technical changes would decrease operational burden on CMS programs. Commenters noted that these changes would be easier for noncitizen consumers to understand and would also make it easier for individuals and entities conducting outreach and enrollment assistance to assist immigrant consumers.

Response: We appreciate commenters' support for making technical clarifications to our definition of "lawfully present." We agree that these changes will result in simplifications to lawful presence verification operations that will have a positive impact on Exchanges, BHP agencies, and consumers. We also believe that these new policies will be easier for both consumers and consumer advocates to navigate, and we are committed to providing high-quality education and technical assistance on the policy changes in this rule for the many interested parties who assist immigrant communities with health coverage enrollment. We intend to begin providing such education and technical assistance after the publication date of this rule, in advance of the rule's November 1, 2024 effective date.

We received several comments recommending additional modifications or clarifications to the definition of "lawfully present" in this rule. The following is a summary of the comments we received and our responses.

Comment: One commenter recommended that CMS expand access to other noncitizen populations, such as nonelderly nonimmigrants, who make up one third of the nation's projected uninsured.

Response: Our proposed definition of "lawfully present" included all nonimmigrants in a valid status or category regardless of age. These individuals would be eligible for Exchange or BHP coverage if they meet all other eligibility requirements for these programs.

Comment: One commenter noted that immigrant crime victims who are permanently residing under color of law (PRUCOL) should be considered lawfully present and have the same extended ACA coverage.

Response: Victims of qualifying crimes and certain family members who have been granted U nonimmigrant status under 8 U.S.C. 1101(a)(15)(U)[77] are already considered to be lawfully present for HHS insurance affordability programs as nonimmigrants. The classification of PRUCOL—describing any noncitizen living in the United States with the knowledge and consent of DHS, and whose departure DHS does not contemplate enforcing—is not used under the current law. Noncitizens under PRUCOL were previously eligible for certain public benefits, such as Medicaid, if they met all other eligibility requirements in the State plan. However, the PRWORA further limited eligibility so that noncitizens and individuals under PRUCOL could no longer be eligible for such benefits. Such individuals are not considered to be "lawfully present" under HHS health programs, unless they have another immigration status that is considered to be "lawfully present." Unlike the other categories of lawful presence discussed in this rule, PRUCOL is not an immigration classification recognized or verifiable by DHS, or otherwise supported by current Federal law. We are not expanding the definition of lawful presence to include PRUCOL in this final rule.

Comment: One commenter encouraged CMS to amend the proposed definitions of "lawfully present" to consider individuals who have petitioned for a U visa as nonimmigrants to be lawfully present. The commenter noted that the U visa program provides immigration protections to victims of certain serious crimes, and that victims must submit a statement from a law enforcement official certifying that they have been helpful to the investigation of criminal activity to be eligible. The commenter further noted that there are currently years-long delays for U visa petitioners to receive visas, employment authorization, or decisions relating to deferred action, and that these delays impact both principal U visa petitioners and their children.

The commenter stated that such U visa petitioners are unlikely to be priorities for immigration enforcement and should therefore be considered "lawfully present" for purposes of the CMS programs addressed in this rule. The commenter noted that such a modification to CMS' definitions of "lawfully present" would align with Congressional intent to protect survivors of domestic violence, sexual assault, and human trafficking as stated in legislation including the Violence Against Women Act (VAWA), the Family Violence Prevention and Services Act (FVPSA) and the Victims of Crime Act (VOCA).

The commenter further detailed the severe physical and mental health needs of U visa petitioners, who are likely to be survivors of domestic violence, sexual assault, human trafficking, and other forms of gender-based violence. The commenter cited adverse physical health effects of abuse including chronic pain, migraines and frequent headaches, sexually transmitted infections, and stomach ulcers. The commenter also noted that survivors of domestic and sexual violence tend to face chronic health issues including depression, alcohol and substance abuse, and HIV/AIDS, which can limit the ability of survivors to manage other chronic conditions like diabetes or hypertension. Given that U visa petitioners are likely to have many severe and complex health needs, the commenter stated that it is particularly important to ensure that this population has access to health insurance coverage.

Response: We appreciate commenters' concern for U nonimmigrant status petitioners, and we recognize that such petitioners are a vulnerable population often with profound health care needs. Generally, applicants and petitioners for statuses or categories who do not have an underlying approved status or category are not considered to be lawfully present, except in very limited circumstances. We note that once an individual has deferred action, including under DHS policy or regulations providing deferred action to certain U nonimmigrant status petitioners in the United States with a pending bona fide petition,[78] has been placed on the U nonimmigrant status waiting list,[79] or has U nonimmigrant status, they are considered lawfully present under the deferred action or valid nonimmigrant part of the definition of "lawfully present" at paragraphs (9) and (2), respectively.

Comment: One commenter urged HHS to consider expanding its definition of "lawfully present" to include all individuals regardless of their immigration status. The commenter noted that undocumented immigrants are typically barred from accessing

[77] Victims of Trafficking and Violence Protection Act of 2000, div. B., Violence Against Women Act of 2000 (VTVPA 2000), tit. V, Battered Immigrant Women Protection Act of 2000, Public Law 106–386, sec. 1513, 114 Stat. 1464, 1533–37 (2000), *amended by* Violence Against Women Department of Justice Reauthorization Act of 2005, tit. VIII, Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006), *amended by* Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Public Law 109–271, 120 Stat. 750 (Aug. 12, 2006), *amended by* TVPRA 2008, Public Law 110–147, 122 Stat. 5044 (Dec. 23, 2008), *amended by* VAWA 2013, Public Law 113–4, 127 Stat. 110, 111–118, 140, 144, 156–159 (Mar. 7, 2013).

[78] USCIS Policy Manual, Vol. 3, Part C, Chap. 5, available at *https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5* (last visited July 27, 2023).

[79] 8 CFR 214.14(d)(2).

health coverage and health care despite performing essential jobs and services in their communities.

Response: The ACA states that if an individual is not considered "lawfully present," the individual will not be treated as a qualified individual and may not be covered under a QHP. We believe that including all individuals regardless of their immigration status in the definition of "lawfully present" is beyond our regulatory authority without further legislative clarification.

Comment: A few commenters encouraged CMS to include language in the final rule, or to release additional guidance, that supports States that are interested in pursuing section 1332 waivers to allow individuals who are not "lawfully present" to enroll in Exchange coverage or a BHP and access State-funded subsidies. Commenters noted that thus far only Washington State has pursued a section 1332 waiver to waive section 1312(f)(3) of the ACA to the extent it would otherwise require excluding certain State residents from enrolling in QHPs and qualified dental plans (QDPs) through the State Exchange and that other States may be interested in adopting similar policies.

Response: We appreciate the commenters' suggestions regarding section 1332 waivers and will consider releasing additional guidance on the subject in the future. We note that BHP-eligible individuals must be lawfully present in the United States under section 1331(e)(1) of the ACA. Therefore, BHP Trust Funds may not be used toward BHP coverage for individuals who are not lawfully present. Additionally, section 1331(e)(1) of the ACA is not a waivable provision under section 1332(a)(2) of the ACA, and BHP Trust Funds may not be used to finance activities under a section 1332 waiver. We note, however, that there is no prohibition on using section 1332 waiver pass-through funding to fund State affordability programs (such as State subsidies) under the waiver plan for health insurance coverage for individuals not lawfully present, so long as the waiver plan meets the section 1332 statutory guardrails and other applicable requirements.

Comment: One commenter stated that premium tax credits and cost-sharing reductions to lower the cost of a QHP purchased through an Exchange constitute a "Federal public benefit" under PRWORA, and that such financial assistance may only he made available to individuals who are "qualified aliens" as defined under PRWORA.

Response: We do not believe PRWORA's restriction on "Federal public benefits" to "qualified aliens" at 8 U.S.C. 1611(a) applies to the ACA. The ACA, enacted after PRWORA, directly addresses the question of which noncitizens are entitled to benefits or subsidies, and it does so through a framework that irreconcilably conflicts with the earlier statute's approach. In particular, the ACA restricts benefits and subsidies to noncitizens who are "lawfully present"—a group that is, and was understood to be, more expansive than the group of "qualified aliens." The specific approach that the Congress chose to apply to the particular benefits and subsidies created by the ACA overtakes the broader approach to "public benefits" in general in the earlier-enacted PRWORA.

The ACA departed from PRWORA's restriction that only "qualified aliens" could receive covered benefits. Instead, in multiple provisions related to Exchanges, the Congress allowed various benefits or subsidies for individuals who were "lawfully present in the United States." [80] In fact, the "lawfully present" language is similar to the exceptions that the Congress used in 8 U.S.C. 1611(b)(2), (3), and (4) to permit certain non-qualified aliens to obtain Social Security, Medicare, and Railroad Retirement benefits.

The ACA did not expressly define "lawfully present," but the legislative history supports that the ACA Exchanges and subsidies were intended to allow immigrants who are lawfully present in the United States, who are otherwise ineligible for Medicaid, to be eligible to receive tax credits and purchase coverage through Exchanges.[81] In particular, the Congress was aware of the intersection and intended to depart from the PRWORA framework when enacting the ACA. The Congressional Research Service (CRS) has recognized that the "lawful presence" framework the Congress adopted in the ACA irreconcilably conflicts with PRWORA, stating:

> It is rather clear, for instance, that PRWORA does not restrict alien eligibility for the health benefits authorized in the Patient Protection and Affordable Care Act (ACA) of 2010. The ACA does not override PRWORA expressly but does extend eligibility to "lawfully present" aliens, a more expansive category than "qualified aliens" under PRWORA.[82]

In a separate report, the CRS identified the ACA as an example of the establishment of "clear rules for alien eligibility in the new legislation that conflict irreconcilably with PRWORA." [83]

The ACA also expressly provides that noncitizens who are lawfully present but who are ineligible for Medicaid "by reason of such alien status" are considered eligible for PTCs [84] and CSRs [85] even if their household income is below the otherwise applicable threshold of 100 percent of the FPL. This clearly demonstrates that the Congress intended and understood that the "lawfully present" standard applicable to APTC and CSRs was broader than the "qualified alien" standard applicable to Medicaid programs.

We previously issued regulations defining "lawfully present" for various ACA programs, specifically PCIP, Exchanges, and the BHP, that differed from the PRWORA restrictions and extended eligibility to a more expansive category than "qualified aliens" under PRWORA. As previously discussed in this rule, CMS first defined "lawfully present" as an eligibility criterion for purposes of PCIP shortly after the ACA's enactment, with regulations published in 2010 (75 FR 45013). This definition of "lawfully present," was later applied to eligibility for other ACA programs; regulations pertaining to Exchanges were issued in 2012 (77 FR 18309) and regulations pertaining to the BHP were issued in 2014 (79 FR 14111). In all of these regulations, consistent with direction from the Congress, CMS provided a definition of "lawfully present" that was more expansive than the definition of "qualified aliens" under PRWORA. We are modifying these regulatory definitions of "lawfully present" for Exchanges and the BHP as described in this final rule.

Comment: One commenter urged HHS to amend its regulatory definition of "lawfully present" for purposes of enrollment in a QHP through an Exchange, APTC, CSRs, and a BHP to exclude immigrants who do not have "lawful immigration status" and who therefore "may not be reasonably expected to be lawfully present in the United States for the duration of enrollment," as required by the ACA at 42 U.S.C. 18032(f)(3) and 42 U.S.C. 18071(e)(2). The commenter further

[80] *See* 42 U.S.C. 18001(d)(1), 18032(f)(3), 18071(e), 18081(a)(1), and 18082(d).

[81] See 156 Cong. Rec. S2079 (2010) *https://www.congress.gov/crec/2010/03/25/CREC-2010-03-25-senate.pdf.*

[82] See CRS Report R46510, *PRWORA's Restrictions on Noncitizen Eligibility for Federal Public Benefits: Legal Issues,* by Ben Harrington (Sept. 3, 2020) *https://crsreports.congress.gov/product/pdf/R/R46510.*

[83] CRS Report LSB10526, *PRWORA and the CARES Act: What's the Prospective Power of a "Notwithstanding" Clause?* by Ben Harrington (July 27, 2020). *https://crsreports.congress.gov/product/pdf/LSB/LSB10526.*

[84] 26 U.S.C. 36B(c)(1)(B).

[85] 42 U.S.C. 18071(b)(2).

specified that because recipients of deferred action, TPS, Deferred Enforced Departure (DED), and parole do not have a legal right to remain in the United States, CMS does not have a reasonable basis to assume that such individuals will remain lawfully present for the duration of their potential enrollment.

One commenter agreed with CMS that "lawful presence" is a statutory term of art that is distinct from "lawful status," and that it is a statutory prerequisite for receipt of certain benefits. The commenter suggested that *DHS* v. *Regents* found that lawful presence "is not the same as forbearance nor does it flow inexorably from forbearance. Thus, while deferred action recipients have been designated lawfully present for purposes of Social Security and Medicare eligibility . . . agencies can also exclude them from this designation." [86] The commenter stated that because lawful presence is "context-dependent" and "there is no express definition of 'lawfully present' . . . for all purposes," that CMS should exclude all recipients of deferred action, TPS, and DED from its regulatory definition of "lawfully present" for purposes of ACA benefits eligibility. The commenter noted that even if such individuals are considered "lawfully present" for other purposes, that the ACA's requirement that noncitizens be "reasonably expected" to be lawfully present for the duration of their QHP enrollment means that they must be excluded from the definition of "lawfully present" used to determine eligibility to enroll in a QHP.

In arguing that TPS recipients cannot be reasonably expected to be lawfully present for the duration of their QHP enrollment, the commenter stated that TPS is a form of forbearance from removal proceedings. The commenter noted that under 8 U.S.C. 1254(a), the Secretary of Homeland Security is only authorized to designate a country for TPS for a period of up to 18 months. The commenter noted that while the Secretary is also authorized to extend a country's TPS designation, a country's TPS designation could end during the time period that a TPS recipient is enrolled in a QHP. The commenter further noted that DHS has authority to rescind prior TPS designations, and that TPS is not intended to provide long-term or permanent immigration status. In arguing that deferred action recipients, DED recipients, and parolees cannot be reasonably expected to be lawfully present for the duration of their QHP enrollment, the commenter noted that deferred action, DED, and parole do not provide legal immigration status or a right to remain in the United States, and such categories may be revoked or terminated at any time.

The commenter further noted that the INA stipulates that, for parolees, "when the purposes of such parole shall . . . have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." [87] The commenter acknowledged that the Congress did designate parolees who are paroled for periods of at least one year as "qualified aliens" for purposes of general Federal public benefits eligibility under 8 U.S.C. 1641(b), but noted that this standard does not apply to QHP eligibility, as the Congress specified the "lawfully present" standard in the ACA instead.

Response: We do not agree that deferred action, TPS, DED, and parole recipients cannot reasonably be expected to be lawfully present in the United States for the duration of enrollment as required by the ACA. More specifically, we do not agree with the assertion that we must exclude all recipients of deferred action, TPS, DED, and parole from our regulatory definition of "lawfully present" for purposes of ACA benefits eligibility to meet the ACA's requirement that individuals only be considered "lawfully present" as long as they are reasonably expected to be lawfully present for the duration of their enrollment. Our existing policy and operations, as well as the policies in this final rule, are in line with the ACA's statutory requirements.

As the commenter indicated, the ACA requires both that individuals who are lawfully present be considered eligible to enroll in a QHP, and that individuals only be considered lawfully present if they are expected to be lawfully present for the duration of enrollment.

As we noted in a 2012 rulemaking (77 FR 18309, 18350), we do not interpret the ACA's "reasonably expected" standard to mean that an applicant must be lawfully present for an entire coverage year. Rather, we noted that the lawful presence verification processes would address whether an applicant's lawful presence is time-limited, and if so, the Exchange would determine his or her eligibility for the period of time for which his or her lawful presence has been verified. We have verification processes in place for applicants whose immigration status or category is temporary and would be able to terminate enrollment for consumers in a hypothetical situation where their deferred action, TPS, DED, or parole designation expired, or was rescinded or terminated. Thus, Exchanges on the Federal platform currently balance these statutory directives by considering whether someone is lawfully present at the time of their application, and by generally requiring applicants whose immigration status or category is expiring within the next 90 days to submit additional information demonstrating their continuing lawful presence.

We note that many individuals in these categories have been in the United States for extended periods of time. For example, TPS recipients have been in the United States for 20 years, on average; we would be incorrect to assert that a TPS recipient was not "reasonably expected" to remain lawfully present during their Exchange enrollment solely on the basis of their receipt of TPS.[88] We also clarify that the Supreme Court in *DHS* v. *Regents* in no way suggested that agencies could not consider deferred action recipients to be "lawfully present." [89] We note that we have considered recipients of deferred action under policies other than DACA—including TPS, DED, and parole—to be "lawfully present" for purposes of eligibility for Exchange coverage since 2012 (77 FR 18309). For the reasons discussed here, we do not believe it is necessary or appropriate to exclude recipients of deferred action, TPS, DED, and parole from our definitions of "lawfully present."

3. Severability

We proposed to add a new section at 45 CFR 155.30 addressing the severability of the provisions proposed in the proposed rule. In the event that any portion of a final rule is declared invalid, we intended that the various provisions of the definition of "lawfully present" be severable, and that the changes to the definition of "lawfully present" in 45 CFR 155.20 would continue even if some of the changes to any individual category are found invalid. The severability of these provisions, and the public comments we received on our proposal to add severability clauses, are discussed in detail in section III. of this rule.

[86] *Dep't of Homeland Sec.* v. *Regents of the Univ. of California*, 140 S. Ct. 1891, 1911 n.5 (2020).

[87] 8 U.S.C. 1182(a)(5)(A).

[88] Council on Foreign Relations. What is temporary protected status? (2023). *https://www.cfr.org/backgrounder/what-temporary-protected-status.*

[89] *Dep't of Homeland Sec.* v. *Regents of the Univ. of California*, 140 S. Ct. 1891, 1911 n.5 (2020).

C. Proposed Effective Date

In the proposed rule, we had targeted a potential effective date of November 1, 2023 to align with the Open Enrollment Period for most individual market Exchanges. We were not able to establish a final rule prior to that date. However, we continue to believe that Open Enrollment is a critical opportunity for consumers to shop for and enroll in insurance coverage, and implementation of these changes would be most effective during a period when there are many outreach and enrollment activities occurring from CMS, State Exchanges, assisters, and other interested parties.

We noted in the proposed rule that DACA recipients would qualify for the Special Enrollment Period (SEP) at 45 CFR 155.420(d)(3) for individuals who become newly eligible for enrollment in a QHP through an Exchange due to newly meeting the requirement at 45 CFR 155.305(a)(1) that an enrollee be lawfully present. Despite the availability of the SEP, we believed that proposing to align this rule's effective date with the individual market Exchange Open Enrollment Period would significantly increase the opportunity for individuals to enroll for coverage through the Exchange or a BHP due to the extensive outreach and enrollment activities occurring during this time and the longer period of time individuals have to enroll in a QHP through an Exchange during the individual market Exchange Opeo Enrollment Period (75 days from November 1 through January 15 for Exchanges on the Federal platform) compared with an SEP (60 days from the effective date of the rule). Further, even though the individual market Exchange Open Enrollment Period is, among CMS insurance affordability programs, currently only applicable to Exchanges, we expressed in the proposed rule that it was important to align effective dates between Exchanges, BHP, Medicaid, and CHIP to promote consistency, and because eligibility for these programs is typically evaluated through a single application.[90] [91]

While we are not finalizing a definition of "lawfully present" for purposes of Medicaid and CHIP eligibility at this time for the reasons detailed in section I, we believe that this rule will still have positive health and financial benefits for DACA recipients and other impacted noncitizens who may be eligible in an Exchange or a BHP, as detailed in section II.B.1 and II.B.2. While this final rule will result specifically in changes to the Exchange and BHP definitions of "lawfully present," we believe that any negative effects of the resulting misalignment following the rule's effective date are outweighed by the expected positive impacts of the rule.

In the proposed rule, we sought comment on the feasibility of the November 1, 2023 proposed target effective date and whether to consider a different target effective date. We noted our commitment to working with State agencies and providing technical assistance regarding implementation of these proposed changes, if finalized. We also acknowledged, as outlined above, that State Medicaid and CHIP agencies were experiencing a significant increase in workload to "unwind" (*i.e.,* to return to regular eligibility renewal operations) following the expiration of the continuous enrollment condition in section 6008(b)(3) of the FFCRA on March 31, 2023.[92] We sought comment about the impact of this workload or any other operational barriers to implementation for State Exchanges, and State Medicaid, CHIP, and BHP agencies. While the proposed rule's target effective date of November 1, 2023 has passed, similar considerations regarding feasibility and State impacts are still relevant.

We received public comments on this proposed target effective date. The following is a summary of the comments we received and our responses.

Comment: The majority of comments that CMS received supported the November 1, 2023 effective date and noted the benefits of aligning with the individual market Exchange Open Enrollment Period and related education and outreach activities. One commenter, a State department of insurance, stated that aligning with such outreach would support ongoing efforts to lower rates of uninsurance.

Response: We agree that it is important for impacted noncitizens and other interested parties, such as enrollment assisters, that this rule be implemented in time to align with the individual market Exchange Open Enrollment period to maximize enrollment in health coverage for impacted noncitizens who will be affected by the final rule. Given that the initially proposed effective date of November 1, 2023 has now passed, we believe that aligning the effective date of this rule with the individual market Exchange Open Enrollment Period on November 1, 2024 will help ensure that the maximum number of newly eligible impacted noncitizens are able to seamlessly enroll in coverage through the Exchange or BHP. CMS plans to leverage existing channels for outreach and education utilized during the individual market Exchange Open Enrollment Period to ensure that impacted noncitizens are aware that they may be eligible for coverage. We appreciate commenters' perspectives on the feasibility of operationalizing the changes in this rule by the initially proposed effective date of November 1, 2023, and we are committed to assisting our partners and interested parties with their implementation efforts. CMS is finalizing an effective date of November 1, 2024, for Exchanges and the BHP and, as described in section I, is not finalizing the proposed definition of "lawfully present" for Medicaid and CHIP agencies at this time.

Comment: We received some comments urging the agency to adopt an earlier effective date than November 1, 2023. These comments varied in proposed effective date. Some commenters, including advocacy organizations, professional trade associations, and State government agencies, urged us to consider the rule effective upon publication in the **Federal Register**. Other commenters recommended that the rule take effect 30 days after publication in the **Federal Register**. Commenters that supported an earlier effective date noted the importance of making health insurance affordability programs available to impacted noncitizens as quickly as possible, and noted that they did not believe it was necessary to wait for the individual market Exchange Open Enrollment Period given that Exchange applicants would qualify for an SEP and that Medicaid, CHIP, and BHP currently allow for year-round enrollment.[93] One

[90] Pursuant to 42 CFR 600.320(d), a State operating a BHP must either offer open enrollment periods pursuant to Exchange regulations at 45 CFR 155.410 or follow Medicaid's continuous open enrollment process. As of April 1, 2024, only Minnesota currently operates a BHP, and it follows Medicaid's continuous open enrollment process.

[91] See 42 CFR 435.907, 42 CFR 457.330, and 45 CFR 155.405 for requirements related to a single streamlined application for all insurance affordability programs.

[92] See CMS, SHO # 23–002, "Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023," January 27, 2023, available at *https://www.medicaid.gov/media/149291;* Additional guidance for State Medicaid and CHIP agencies is available at *https://www.medicaid.gov/unwinding.*

[93] See 42 CFR 600.320(d). Pursuant to 42 CFR 600.320(d), a State operating a BHP must either offer open enrollment periods pursuant to Exchange regulations at 45 CFR 155.410 or follow Medicaid's continuous open enrollment process. As of April 1, 2024, only Minnesota currently operates a BHP and it follows Medicaid's continuous open enrollment process.

health care organization emphasized the importance of finalizing the rule as soon as possible given the uncertain future of the DACA policy. One commenter urged CMS to implement the final rule as quickly as possible, ideally by the upcoming SEP.

Response: We note commenters' interest in seeing the rule implemented as soon as possible, and we agree that DACA recipients and other impacted noncitizens should be able to access the Exchange or BHP coverage for which they will be eligible as soon as possible. However, we also acknowledge the importance of giving Exchanges, including Exchanges on the Federal platform and State Exchanges operating their own platforms, BHPs, assisters, and other entities who support enrollment in Exchange and BHP coverage sufficient time to prepare for the changes in this rule. Given the time required for us to closely review and respond to all public comments received and to develop the operational changes required to implement the rule's provisions, we do not believe it is feasible for Exchanges on the Federal platform to implement this rule prior to its effective date on November 1, 2024. We acknowledge that some DACA recipients will be eligible under this final rule for a BHP (we estimate that 1,000 DACA recipients will enroll in BHP), to which the individual market Exchange Open Enrollment Period does not currently apply.[94] However, BHPs will also need to make operational changes as a result of this rule, and we believe that a November 1, 2024 effective date will allow BHPs sufficient time to implement the operational changes required.

CMS also acknowledges that DACA recipients and other impacted noncitizens who are newly considered to be lawfully present as a result of this rule will qualify for an SEP; however, as stated previously, we are not able to effectively implement the rule with an effective date earlier than November 1, 2024. We are committed to working with impacted State Exchanges operating their own platforms and BHP agencies to provide technical assistance and educational materials to facilitate successful implementation of this rule.

For the reasons detailed in section I., we are not finalizing a definition of "lawfully present" for purposes of Medicaid and CHIP eligibility at this time. We acknowledge that commenters urged us to ensure that DACA recipients and other impacted noncitizens would be able to access these programs as soon as possible. During this time, we believe that many DACA recipients and other impacted noncitizens who may have been eligible for Medicaid or CHIP under the policies in the proposed rule will instead be able to access coverage by enrolling in a QHP via the Exchange or BHP coverage.[95]

For the commenter who urged us to implement the rule by the upcoming SEP, we believe that the commenter may have been referring to the individual market Exchange Open Enrollment Period; the benefits of aligning with the Exchange Open Enrollment Period are addressed above. Alternatively, this commenter may be referring to the SEP for individuals who lose Medicaid or CHIP coverage due to the end of the continuous enrollment condition in Medicaid, also referred to as the "Unwinding SEP." This SEP has been available on *HealthCare.gov* to consumers since March 31, 2023 and remains in effect.[96] As noted previously, this final rule will be effective for the 2024 individual market Exchange Open Enrollment Period which will begin on November 1, 2024.

Comment: Many commenters agreed with CMS that DACA recipients and other impacted noncitizens would qualify for the existing SEP for individuals who are newly considered to be lawfully present for the 60 days following the effective date of the rule. One nonprofit organization urged CMS to implement an SEP for DACA recipients that would last for 12 months after the effective date of the rule, to ensure that individuals have sufficient time to enroll.

Response: Commenters are correct that noncitizens who are newly considered lawfully present under the definition in the final rule will qualify for the existing 60-day SEP for individuals who are newly lawfully present under 45 CFR 155.420(d)(3) as of the applicability date of the final rule. We acknowledge the suggestion that we make an extended SEP, greater than 60 days, available for this population. However, we believe that the individual market Open Enrollment Period and the existing 60-day SEP should give impacted noncitizens sufficient time to apply for and enroll in coverage. In our prior experience implementing changes to Exchange eligibility rules that align with the individual market Open Enrollment Period, such as changes related to employer-sponsored coverage affordability and premium tax credit eligibility (87 FR 61979), we are not aware of significant issues related to consumers having sufficient time to enroll. In nearly all situations where consumers become newly eligible to enroll in a QHP or for APTC or CSRs, we provide a 60-day SEP, and we believe that is generally an appropriate approach. Additionally, as indicated above, pursuant to 42 CFR 600.320(d), Minnesota's BHP has elected to follow Medicaid's continuous enrollment process and therefore an extended SEP would not apply to this population.

We acknowledge that there may be unique challenges relevant to the consumers impacted by this rule, and we are committed to working with State Exchanges not on the Federal platform, BHPs, assisters, and community-based organizations to conduct targeted outreach to facilitate efficient enrollment processes for DACA recipients and other impacted noncitizens who may be eligible for coverage. We also note that some State Exchanges not on the Federal platform, including those in California and New Jersey, where an estimated 168,120 and 14,760 DACA recipients live, respectively, have individual market Open Enrollment Periods that are longer than the one provided in the Exchanges on the Federal platform, giving consumers up to 90 days to enroll in a QHP.

Comment: A minority of State Exchanges not on the Federal platform that commented on the rule raised concerns that the proposed effective date of November 1, 2023, may not be feasible. These commenters urged CMS to provide State Exchanges not on the Federal platform with flexibility on the timeframe for full implementation of the rule's provisions. Some of these commenters also stated concerns that changes would not be available for testing through the Federal Data Services Hub (hereinafter "the Hub") in a timely manner. Additionally, some commenters noted the importance of finalizing the rule as soon as possible, to give interested parties, including State Exchanges not on the Federal platform, assisters, and community-based organizations as much time as possible to prepare for the policy and operational changes in the rule prior to its effective date.

[94] Pursuant to 42 CFR 600.320(d), a State operating a BHP must either offer open enrollment periods pursuant to Exchange regulations at 45 CFR 155.410 or follow Medicaid's continuous open enrollment process. The one State that currently operates a BHP, Minnesota, follows Medicaid's continuous open enrollment process.

[95] DACA recipients who qualify to enroll in a QHP will generally be eligible for APTC and CSRs (subject to other eligibility requirements) even if their income is under 100 percent of FPL, as individuals who are lawfully present but ineligible for Medicaid due to their "alien status" may be eligible for APTC and CSRs. See 26 U.S.C. 36B(c)(1)(B) and 42 U.S.C. 18071(b)(2).

[96] See *https://www.medicaid.gov/resources-for-states/downloads/extn-sep-cnsmrs-lsg-chip-cvrg-admin-faq.pdf.*

Response: We acknowledge commenters' concerns about challenges with implementation of the provisions of this rule. To address these concerns, we plan to release technical guidance to State Exchanges not on the Federal platform and to BHP agencies to assist those agencies with implementing provisions of the rule. We are committed to supporting readiness for State Exchanges not on the Federal platform and BHP agencies, while also removing barriers to coverage for eligible individuals and supporting their enrollment through the Exchange or a BHP for which they are eligible. We will be available to work with State Exchanges not on the Federal platform and BHP agencies individually to facilitate their compliance by November 1, 2024.

We also acknowledge the possibility that some State Exchanges not on the Federal platform may not be able to fully implement the provisions of this rule hy the November 1, 2024 effective date. We further acknowledge that if State Exchanges are not able to implement by November 1, 2024, that there is a risk that DACA recipients and other impacted noncitizens could have limited opportunity to access QHP coverage through the SEP for which they are eligible under 45 CFR 155.420(d)(3), given that the trigger event for the SEP is the November 1, 2024 effective date of this rule and only provides 60 days after the triggering event to select a QHP. If a delay in State Exchange implementation results in newly eligible consumers being unable to enroll in coverage during their initial 60-day SEP window, State Exchanges could consider granting a pathway into QHP coverage for eligible applicants on a case-by-case hasis under exceptional circumstances authority at 45 CFR 155.420(d)(9).

Comment: A few commenters urged CMS to consider a later effective date than November 1, 2023 due to ongoing litigation concerning a separate DHS final rule. One nonprofit organization urged CMS to refrain from finalizing the rule and setting an effective date until the challenge to DACA in *Texas* v. *United States,* 50 F.4th 498 (5th Cir. 2022), has reached a final disposition. The commenter further stated concern that pursuing this rulemaking while litigation continues could result in unnecessary expenditures and investment of staff time by DHS and HHS. A comment submitted by some State attorneys general urged CMS to postpone the effective date of the final rule pending judicial review.

Response: We do not believe it is necessary to delay this final rule in its entirety pending a resolution of litigation concerning DHS's final rule. We are not finalizing a definition of "lawfully present" for purposes of Medicaid and CHIP eligibility at this time, for the reasons detailed in section I. Moreover, this rule makes other changes to the definitions of "lawfully present," in 45 CFR 155.20 and impacts other noncitizens in addition to DACA recipients.

We acknowledge that current court orders prohibit DHS from fully administering the DHS DACA final rule (87 FR 53152). Those orders, however, have been subject to judicial stays since their issuance and, as a result, the DACA policy has remained in effect with respect to current DACA recipients. Additionally, the policies in this rule solely address eligibility for specific HHS health programs and are separate from DHS regulations. As described in detail throughout this rule, this rule reflects our independent statutory authority under the ACA to define "lawfully present" for purposes of eligibility to enroll in a QHP or the BHP.

After careful consideration of public comments, we are finalizing November 1, 2024 as the effective date of this final rule. This means that, effective November 1, 2024, the definitions of "lawfully present" used to determine eligibility to enroll in a QHP, and for APTC and CSRs, as well as for the BHP, will no longer exclude DACA recipients and will also reflect the changes detailed in section II.B.2. The proposed definitions of "lawfully present" for Medicaid and CHIP are not heing addressed in this final rule. For purposes of these programs, the definitions established in the 2010 SHO and 2012 SHO will continue to apply.

D. Eligibility in States, the District of Columbia, the Northern Mariana Islands, and American Samoa and Children's Health Insurance Programs (CHIPs) (42 CFR 435.4 and 457.320(c))

1. Lawfully Residing and Lawfully Present Definitions

We proposed to define the term "lawfully present" at 42 CFR 435.4 for Medicaid eligibility under the CHIPRA 214 option, consistent with the Exchange definitions described in the proposed rule at 45 CFR 155.20, including the minor technical changes and clarifications to the lawfully present definition described in preamble section II.B.2 of this final rule. We also proposed to add a cross-reference to this definition at 42 CFR 457.320(c) for purposes of determining eligibility for CHIP under the CHIPRA 214 option. We proposed a definition of "lawfully residing" in 42 CFR 435.4 to mirror the definition in the 2010 SHO, discussed previously in this rule—that an individual is "lawfully residing" if they are "lawfully present" in the United States and are a resident of the State in which they are applying under the State's Medicaid residency rules. For CHIP, we also proposed to add a cross-reference at 42 CFR 457.320(c) to the "lawfully residing" definition at 42 CFR 435.4, except that States must comply with CHIP residency requirements at 42 CFR 457.320(e).

Due to the reasons discussed in section I of this final rule, we are not finalizing a "lawfully present" definition for Medicaid and CHIP at this time. This means that for the definition of "lawfully present" used in determining eligibility for Medicaid and CHIP under the CHIPRA 214 option, the current policy, based on the 2010 SHO and the 2012 SHO, continues to apply.

We received comments regarding the proposals to define the term "lawfully present" for Medicaid and CHIP eligibility under the CHIPRA 214 option. As we are continuing to consider and evaluate these comments, we are not providing our responses to comments in the final rule at this time. Comments that expressed general support for or opposition to the policies in the proposed rule without reference to a specific insurance affordability program have been addressed above in sections II.B.1 and II.B.2 with respect to Exchange and BHP coverage.

2. Defining Qualified Noncitizen

Under our current Medicaid regulations, a "qualified non-citizen" is defined at 42 CFR 435.4, which includes an individual described in 8 U.S.C. 1641(b) and (c). Similarly, 42 CFR 457.320(b)(6) defines a "qualified alien" for CHIP with a cross-reference to section 431 of PRWORA, which is codified at 8 U.S.C. 1641. The definitions are currently used for determining Medicaid and CHIP eligibility under our regulations at 42 CFR 435.406 and 42 CFR 457.320, and the definition is also used when determining eligibility of individuals under the CHIPRA 214 option. In the proposed rule, we considered whether the current definition of "qualified noncitizen" at 42 CFR 435.4 should be modified to provide greater clarity and increase transparency for the public. Specifically, we noted that we were considering whether the definition should be modified to expressly include all of the categories of noncitizens covered by 8 U.S.C. 1641(b) and (c), as well as additional categories of

noncitizens that Medicaid agencies are required to cover (if they meet all eligibility requirements in the State) as a result of subsequently enacted legislation that was not codified in 8 U.S.C. 1641(b) or (c). For example, Federal law requires certain populations to be treated as "refugees" for certain purposes of eligibility for certain means tested benefit programs, including Medicaid and CHIP. Because refugees are listed in 8 U.S.C. 1641(b)(3) as a category of noncitizens who are "qualified aliens" and are also exempt from the 5-year waiting period under 8 U.S.C. 1613, these noncitizens also are treated as qualified noncitizens for purposes of Medicaid and CHIP and are exempt from the 5-year waiting period. In the proposed rule, we indicated that we were considering including these additional categories of noncitizens who are treated as refugees under other Federal statutes as specifically included in the definition of "qualified noncitizen" in 42 CFR 435.4, and we sought comment on this possibility. Examples of such noncitizens include victims of trafficking and certain Afghan and Ukrainian parolees.[97] A full list can be found below in section II.D.2. of this rule. Because noncitizens who are treated as refugees for purposes of Medicaid eligibility are also treated as refugees for purposes of CHIP eligibility, these categories of noncitizens (discussed previously in the proposed rule) were considered for the definition of qualified noncitizen for purposes of CHIP.

We also noted in the proposed rule that there was at least one difference in how the term "qualified noncitizen" applies to Medicaid compared to the other programs discussed in the proposed rule. Specifically, we noted that COFA migrants were only considered "qualified aliens" for purposes of the Medicaid program, under the Consolidated Appropriations Act, 2021.[98] However, after the proposed rule was issued, Congress amended 8 U.S.C. 1641(b)(8) through CAA, 2024[99] to remove the language that limited COFA migrants as qualified noncitizens only for purposes of the Medicaid program. Since CHIP is identified as a Federal public benefit as defined at 8 U.S.C. 1611(c),[100] COFA migrants are now considered qualified noncitizens for the purposes of CHIP eligibility. Further, CAA, 2024 amended 8 U.S.C. 1613(b)(3) to expand the exception for COFA migrants from the 5-year waiting period for all Federal means-tested public benefits, allowing immediate eligibility for CHIP effective March 9, 2024, if the individual meets all other eligibility requirements in the State plan. Since the new legislation supersedes our proposed rule, we will remove the proposed limitations considering COFA migrants from the definition of qualified noncitizen in this final rule.

We solicited comments on our proposal to add more detailed information to the definition of qualified noncitizen under Medicaid and CHIP to promote clarity, transparency, and administrative ease.

We also proposed a nomenclature change to the definition of "citizenship," "noncitizen," and "qualified noncitizen" in 42 CFR 435.4 to remove the hyphen in the term "non-citizen" and use the term "noncitizen" throughout those definitions. We proposed this change to ensure alignment with terminology used by DHS. We noted that these changes do not affect eligibility for Medicaid and CHIP programs and only streamline the use of terminology for clarity and administrative ease. We did not receive any public comments regarding those changes. We are finalizing the changes as proposed in 42 CFR 435.4.

We received several public comments on our request to provide additional detail to the definition of qualified noncitizen used for Medicaid and CHIP at 42 CFR 435.4 and 42 CFR 457.320(c). No commenters opposed our proposal.

Comment: Some commenters supported CMS' proposal to include a detailed definition of "qualified noncitizen" at 42 CFR 435.4 and to expressly list all the categories of noncitizens that Medicaid and CHIP agencies are required to cover. One commenter supported a definition that includes categories of noncitizens covered by 8 U.S.C. 1641(h) and (c), any additional categories that Medicaid agencies are required to cover as a result of subsequently enacted legislation not currently codified in Title 8, as well as a "residual category that encompasses any statuses created by subsequent legislation or other changes to the statute after the proposed rule is finalized."

These commenters noted that codifying a clear definition of "qualified noncitizen" would reduce confusion among individuals applying for Medicaid coverage, those helping them apply for coverage, and for Medicaid agencies.

Response: We agree with commenters that including a detailed definition of "qualified noncitizen" in our regulations will help clarify our policy for beneficiaries, State Medicaid agencies, and other partners and interested parties, and we are including a definition of "qualified noncitizen" in the final rule at 42 CFR 435.4, which is incorporated by cross reference in the CHIP regulations at 42 CFR 457.320(c).

We are declining the commenter's suggestion to include a broad catchall category that would include future changes in statute. Adding a provision to accommodate potential future legislation would add ambiguity and uncertainty to the final rule that may be confusing for States that may be applying the regulation once it is effective. Should the Congress make further changes to the definition of qualified noncitizen, we will provide additional guidance.

Comment: One nonprofit organization stated that CMS should include petitioners for U-visas in the definition of qualified noncitizen.

Response: We do not have the statutory authority to include U nonimmigrant status petitioners in our definition of "qualified noncitizen," because the definition of qualified noncitizen is based on PRWORA's definition of "qualified alien" at 8 U.S.C. 1641 and other specific statutory changes authorizing treatment of certain noncitizens as a "refugee" for purposes of Medicaid and CHIP eligibility, among other purposes. Neither the statutory definition at 8 U.S.C. 1641 nor any other Federal statute expressly addresses U nonimmigrant status petitioners' treatment as a refugee or eligibility for Federal public benefits, nor is there a statute that includes nonimmigrants more broadly. Thus, we are not adopting the commenter's suggestion to include U visa petitioners in the definition of qualified noncitizen. See preamble section II.B.2 for additional information on the use of deferred action for certain U nonimmigrant status petitioners.

[97] To date, these other Federal laws include the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)), relating to certain victims of trafficking; section 602(b)(8) of the Afghan Allies Protection Act of 2009, Public Law. 111–8 (8 U.S.C. 1101 note), relating to certain Afghan special immigrants; section 1244(g) of the Refugee Crisis in Iraq Act of 2007 (8 U.S.C. 1157 note), relating to certain Iraqi special immigrants; section 584(c) of Public Law. 100–202 (8 U.S.C. 1101 note), relating to Amerasian immigrants; section 2502(b) of the Extending Government Funding and Delivering Emergency Assistance Act of 2021, Public Law. 117–43, relating to certain Afghan parolees; and section 401 of the Additional Ukraine Supplemental Appropriations Act of 2022, Public Law. 117–128, relating to certain Ukrainian parolees.

[98] Div. CC, Title II, sec. 208, Public Law. 116–260.

[99] Div. G, Title II, sec. 209(f), Public Law. 118–42.

[100] For a list of HHS programs that provide "Federal public benefits," see 63 FR 41658 (Aug. 4, 1998).

Comment: A few commenters noted that they supported the proposed changes to expand eligibility for noncitizens who are treated as refugees, such as certain Afghan and Ukrainian parolees,[101] which would enable these individuals to enroll in an Exchange plan, Medicaid and CHIP.

Response: We appreciate the support for including in the regulatory definition of "qualified noncitizen" both the noncitizens who are included in the definition of "qualified alien" under 8 U.S.C. 1641(b) and (c) as well as the noncitizens who are treated as refugees for purposes of eligibility for Medicaid and CHIP under other Federal statutes, and we are including both groups of noncitizens in the definition at 42 CFR 435.4 and 42 CFR 457.320(c) of the final rule. We wish to clarify that the final rule does not expand eligibility for these noncitizens but merely expressly reflects in our regulations individuals who may he eligible for Medicaid and CHIP under existing statutes, including the expansion of CHIP eligibility for COFA migrants as authorized by CAA, 2024. Individuals who are treated as refugees under other Federal laws are already required by statute to be covered by State Medicaid and CHIP programs if the individual meets all other eligibility requirements in the State plan. Additionally, these individuals are included in the existing Exchange definition of "lawfully present" as qualified noncitizens at 45 CFR 152.2(1), cross-referenced in our current regulation at 45 CFR 155.20 and 42 CFR 600.5, and are therefore eligible for QHP and BHP coverage if they meet other eligibility requirements.

Comment: One commenter requested that we include within the definition of "qualified noncitizen" a list of each category of human trafficking victims separately, while explaining that the list of subsections included is not exclusive. The commenter mentioned that Afghans, Ukrainians, and Iraqis should be specifically listed. The commenter further specified that CMS' definition of "qualified noncitizen" should include T visa holders, "T visa applicants with bona fide determinations" and HHS Office of Trafficking in Persons (OTIP) certifications, human trafficking victims who have been granted continued presence by DHS and receive OTIP certifications, and noncitizen child victims of human trafficking (sex or labor) with eligibility letters from OTIP.

Response: We wish to clarify that victims of a severe form of trafficking in persons under the Trafficking Victims Protection Act of 2000, Public Law 106–386 and family members of trafficking victims granted derivative T nonimmigrant status are considered qualified noncitizens because they are eligible for benefits and services to the same extent as refugees. 22 U.S.C. 7105(b). This statutory provision includes individuals who received a certification from HHS under 22 U.S.C. 7105(b)(1)(E). A victim of a severe form of trafficking in persons may receive an HHS certification if they have complied with any reasonable request for assistance in the detection, investigation, or prosecution of the trafficking (or qualify for an exemption due to their age or an exception due to physical or psychological trauma) and have made a bona fide application for T nonimmigrant status or were granted continued presence by DHS. Such individuals who receive an HHS certification are included as individuals treated as refugees when meeting the requirements of 22 U.S.C. 7105(b). Additionally, we note that T nonimmigrants and T nonimmigrant status applicants who have set forth a prima facie case for such nonimmigrant status are considered qualified noncitizens under 8 U.S.C. 1641(c)(4). We are including these classifications of victims of trafficking and applicants for T nonimmigrant status in our revised definition of qualified noncitizen at 42 CFR 435.4 of this final rule.

After consideration of public comments, we are including in our definition of "qualified noncitizen" in this final rule noncitizens who are considered "qualified aliens" under 8 U.S.C. 1641(b) and (c), and other immigration statuses and categories that are not included in the statutory definition of "qualified aliens" but whom the Congress has specifically authorized be treated as refugees for purposes of eligibility for certain benefits, including Medicaid and CHIP. Specifically, we are including the following noncitizens in the definition of "qualified noncitizen" in 42 CFR 435.4 of the final rule:

- Noncitizens who are victims of a severe form of trafficking in persons, who are eligible for Medicaid and CHIP to the same extent as refugees under section 107 of the Victims of Trafficking and Violence Protection Act of 2000 and the members of a trafficking victim's family who are granted derivative T nonimmigrant status, in accordance with 22 U.S.C. 7105(b)(1)(A);
- Iraqi and Afghan special immigrants, who are eligible for Medicaid and CHIP to the same extent as refugees under the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181, enacted January 28, 2008); the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, enacted March 11, 2009); the Department of Defense Appropriations Act, 2010 (Pub. L. 111–118, enacted December 19, 2009); and the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291, enacted December 19, 2014);
- Amerasian immigrants, who are treated the same as refugees for purposes of Medicaid and CHIP eligibility in accordance with a joint resolution making further continuing appropriations for the fiscal year 1988, and for other purposes (Pub. L. 100–202, enacted December 22, 1987);
- Certain Afghan parolees who are eligible for Medicaid and CHIP to the same extent as refugees in accordance with section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act (Pub. L. 117–43 as amended, enacted September 30, 2021); and
- Certain Ukrainian parolees who are also eligible for Medicaid and CHIP to the same extent as refugees under section 401 of the Additional Ukraine Supplemental Appropriations Act (Pub. L. 117–128 as amended, enacted May 21, 2022).

We are also making a conforming technical change to 42 CFR 435.406(2)(i) to replace the current cross-reference to "qualified noncitizens" as defined in section 431 of PRWORA (8 U.S.C. 1641) to the modified definition of "qualified noncitizen" at 42 CFR 435.4 that is being finalized in this rule. Likewise, in response to public comments and to align CHIP with Medicaid and to include COFA migrants as qualified noncitizens for the purposes of CHIP eligibility as authorized by CAA, 2024, we have finalized a definition of "qualified noncitizen" for purposes of CHIP eligibility at 42 CFR 457.320(c), which cross references to the definition of "qualified noncitizen" at 42 CFR 435.4. We are also finalizing an amendment at 42 CFR 457.320(b)(6) to replace "qualified aliens" with "qualified noncitizens" and to replace the reference to section 431 of PRWORA with the new definition of "qualified noncitizen" at 42 CFR 457.320(c).

Comment: One commenter recommended that we include in the definition of "qualified noncitizen" other individuals who are required to be covered in Medicaid under the Federal statute at 8 U.S.C. 1612(b) but are not considered qualified aliens under 8 U.S.C. 1641 or treated as refugees under other Federal statutes (for example,

[101] See Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act, Public Law. 117–43 (Sept. 30, 2021), as amended, and Section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022, Public Law. 117–128 (May 21, 2022).

American Indians born in Canada or members of a Federally-recognized tribe, 8 U.S.C. 1612(b)(2)(E); 8 U.S.C. 1613(d)(1)). This commenter recommended that CMS include these additional individuals required to be covered by Medicaid in our revised definition of "qualified noncitizen" to promote clarity and transparency to the public specifying those individuals who must be covered in Medicaid, if meeting all other eligibility requirements.

Response: We agree with the commenter that there are additional groups of noncitizens who are required to be covered in Medicaid under 8 U.S.C. 1612(b)(2), but do not agree that these individuals are considered qualified noncitizens under 8 U.S.C. 1641. We also appreciate that there is some confusion regarding the noncitizens for whom coverage under Medicaid and CHIP is required. States are required to provide full Medicaid benefits to certain noncitizens under 8 U.S.C. 1612(b)(2) if they meet all other eligibility requirements in the State plan. We are not adopting the commenter's suggestion to include these individuals in the definition of "qualified noncitizen" in 42 CFR 435.4, as they are not qualified aliens under 8 U.S.C. 1641 or based on other Federal statutes. Moreover, we did not propose a rule that would identify all the individuals required to be covered in Medicaid under 8 U.S.C. 1612(b).

While we are not adopting a final rule, pursuant to the request for clarification, we are identifying in this preamble the individuals that States are required by statute to cover in Medicaid under 8 U.S.C. 1612(b) and are exempt from the 5-year bar under 8 U.S.C. 1613.

Under 8 U.S.C. 1612(h)(2)(A), States must cover for at least 7 years refugees; asylees; noncitizens whose deportation is withheld under specified sections of the INA; Cuban and Haitian entrants; Amerasian immigrants; and other noncitizens treated as if they were refugees for purposes of Medicaid eligibility.

Under 8 U.S.C. 1612(h)(2)(B), States are required to cover lawful permanent residents who have worked or can be credited with 40 qualifying quarters, as defined under title II of the Social Security Act. Quarters worked either by the individual or his or her spouse or parents may be counted if certain conditions, described in 8 U.S.C. 1612(b)(2)(B) and 8 U.S.C. 1645, are met. Under 8 U.S.C. 1612(b)(2)(C), States must provide full Medicaid coverage to all lawfully residing noncitizens who are an honorably discharged veteran or an active-duty service member in the United States Armed Forced as well as to spouses and dependent children of such individuals who meet all other eligibility requirements under the State plan.

In accordance with 8 U.S.C. 1612(b)(2)(E) and (F), States must provide full Medicaid benefits to certain American Indians and noncitizens receiving SSI. Finally, in accordance with 8 U.S.C. 1612(b)(2)(G), States must provide full Medicaid benefits to COFA migrants who live in one of the 50 States or the District of Columbia. Covering COFA migrants in the U.S. territories, including Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa is at the territory's option. All such individuals described in 8 U.S.C. 1612(b)(2) must meet all other eligibility requirements in the State to be eligible for Medicaid coverage.

Since CHIP is not a "designated Federal program" under 8 U.S.C. 1612(b)(3), none of the individuals described in 8 U.S.C. 1612 are eligible for separate CHIP based on this statute, though some of these individuals may be eligible for CHIP under other statutes.

E. Administration, Eligibility, Essential Health Benefits, Performance Standards, Service Delivery Requirements, Premium and Cost Sharing, Allotments, and Reconciliation (42 CFR Part 600)

Section 1331 of the ACA provides States with an option to establish a BHP.[102] In States that elect to implement a BHP, the program makes affordable health benefits coverage available for lawfully present individuals under age 65 with household incomes between 133 percent and 200 percent of the FPL (or in the case of lawfully present noncitizens who are ineligible for Medicaid or CHIP due to immigration status, with household incomes between zero and 200 percent of the FPL) who are not otherwise eligible for other minimum essential coverage including Medicaid, CHIP, or affordable employer-sponsored coverage. As of April 1, 2024, there is one State that operates a BHP—Minnesota.[103]

In the proposed rule, we proposed conforming amendments to the BHP regulations to remove the current cross-reference to 45 CFR 152.2 in the definition of "lawfully present" at 42 CFR 600.5. We proposed to amend the definition of "lawfully present" in the BHP regulations at 42 CFR 600.5 to instead cross-reference the definition of "lawfully present" proposed at 45 CFR 155.20. We noted that this proposal, if finalized, would result in DACA recipients being considered lawfully present for purposes of eligibility to enroll in a BHP in a State that elects to implement such a program, if otherwise eligible. We also noted that, if the proposals were finalized, the modification would ensure that the definition of "lawfully present" used to determine eligibility for coverage under a BHP is aligned with the definition of "lawfully present" used for the other insurance affordability programs. While we are not finalizing a lawfully present definition for Medicaid or CHIP in this final rule for the reasons detailed in section I, we are finalizing a definition of "lawfully present" for purposes of BHP eligibility that will align the definitions used for Exchanges and for BHP.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: One nonprofit organization commenter noted that in Minnesota, a bill was recently passed to expand the State's BHP to all individuals who are otherwise eligible, regardless of immigration status, using State funds. The commenter notes that CMS' rule aligns with Minnesota's ongoing efforts to reduce uncompensated care costs and improve population health.

Response: We appreciate this commenter's support for the rule's provisions to no longer exclude DACA recipients from eligibility for a BHP.

Comment: Commenters noted and appreciated CMS' foresight to ensure that DACA recipients will be able to enroll in a BHP should other States choose this option in the future.

Response: We agree that, should any other States elect to operate a BHP in the future, that DACA recipients in the State would be considered lawfully present for purposes of eligibility for the BHP. Since the proposed rule was published, Oregon has indicated that they intend to begin operating a BHP effective July 1, 2024, and the definition of "lawfully present" finalized in this rule will apply to Oregon's BHP which is currently pending approval with CMS.

After consideration of public comments, we are finalizing the proposal to include a cross-reference to

[102] See 42 U.S.C. 18051. *See also* 42 CFR part 600.

[103] Minnesota's program began January 1, 2015. New York's BHP program began April 1, 2015 and was suspended effective April 1, 2024. For more information, see *https://www.medicaid.gov/basic-health-program/index.html*. Also see, for example, 87 FR 77722, available at *https://www.govinfo.gov/content/pkg/FR-2022-12-20/pdf/2022-27211.pdf*. Oregon is proposing to implement a BHP effective July 1, 2024, and it is currently pending approval with CMS.

45 CFR 155.20 at 42 CFR 600.5 as proposed.

III. Severability

As described in the background section of this rule, the ACA generally [104] requires that to enroll in a QHP through an Exchange, an individual must be either a citizen or national of the United States or be "lawfully present" in the United States.[105] The ACA also generally requires that individuals be "lawfully present" to be eligible for insurance affordability programs such as PTC,[106] APTC,[107] and CSRs [108] for their Exchange coverage. Additionally, enrollees in a BHP are required to meet the same citizenship and immigration requirements as QHP enrollees.[109] The ACA does not define "lawfully present" beyond specifying that an individual is only considered lawfully present if they are reasonably expected to be lawfully present for the period of their enrollment,[110] and that CMS is required to verify that Exchange applicants are lawfully present in the United States.[111]

Since 1996, when the DOJ's Immigration and Naturalization Service issued an interim final rule defining the term "lawfully present" as used in the then-recently enacted PRWORA, Federal agencies have considered deferred action recipients to be "lawfully present" for purposes of certain Social Security benefits (see *Definition of the Term Lawfully Present in the United States for Purposes of Applying for Title II Benefits Under Section 401(b)(2) of Public Law 104–193,* interim final rule, 61 FR 47039). Given the lack of a statutory definition of "lawfully present" in the ACA and given the rulemaking authority granted to CMS under 42 U.S.C. 18051 and 42 U.S.C. 18041, HHS has discretion to determine the best legal interpretations of these terms for purposes of administering its programs. As previously described, CMS' authority to remove the exclusion that treated DACA recipients differently from other noncitizens with deferred action under the definition of "lawfully present" for purposes of eligibility for health insurance through an Exchange and a BHP is supported by law and should he upheld in any legal challenge.

Similarly, we are finalizing technical changes to the definition of "lawfully present" for the purposes of eligibility for a QHP through an Exchange or a BHP, and we believe those changes are also well-supported in law and practice and should be upheld in any legal challenge. We also believe that our exercise of our authority reflects sound policy.

However, in the event that any portion of this final rule is declared invalid, we intend that the other changes to the definition of "lawfully present" would be severable. For example, if a court were to stay or invalidate the inclusion of one provision in the definition of "lawfully present," for purposes of eligibility for the Exchanges or the BHP, we intended the remaining features in sections II.B.1 and II.B.2 of this rule to stand. Likewise, CMS intends that if one provision of the changes to the definition of "lawfully present" is stayed or invalidated, that other provisions within this regulation be severable to the extent possible. For example, if one of the provisions discussed in section II.B.2 (Other Changes to the "Lawfully Present" Definition) of the proposed rule is stayed or invalidated, CMS intends that the other provisions discussed in that section be severable.

Additionally, individual portions of this final rule have significant benefits and would be worthwhile in themselves. For example, a rule consisting only of the technical and clarifying changes in section II.B.2 of this final rule, applied through cross-reference to Exchanges and BHPs, would allow CMS and Exchanges to more effectively verify the lawful presence of noncitizens for purposes of eligibility for health insurance affordability programs. A rule consisting solely of the changes in section II.B.1 of this rule would have significant benefits because it would increase access to health coverage for DACA recipients. These reasons alone would justify the continued implementation of these policies.

In the proposed rule, we proposed a severability provision at 45 CFR 155.30 indicating that the provisions regarding the definition of "lawfully present" proposed at 45 CFR 155.20 were intended to be severable from each other, as well as from the definitions of "lawfully present" and "lawfully residing" proposed at 42 CFR 435.4. We also proposed a provision at 42 CFR 435.12 regarding the severability of the definitions of "lawfully present" and "lawfully residing" that were proposed at 42 CFR 435.4.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Commenters stated support for CMS' inclusion of severability clauses in the rule. Commenters stated that they agreed with HHS that the proposed changes are well-supported in law and practice and that they reflect sound policy, but that they also recognized that the rule's changes are not dependent on each other and could be implemented independently.

Response: We appreciate commenters' agreement that the changes in this rule are well-supported in law and practice. We further appreciate commenters' recognition that the provisions of this rule are not dependent on each other and could be implemented independently.

After consideration of public comments, we are finalizing the severability clause at 45 CFR 155.30 as proposed, with one modification to no longer reference the definitions of "lawfully present" and "lawfully residing" proposed at 42 CFR 435.4, given that we are not finalizing those definitions at this time. Because we are not finalizing definitions of "lawfully present" or "lawfully residing" at 42 CFR 435.4 at this time, we are also not finalizing the proposed severability clause that references those definitions at 42 CFR 435.12 at this time. The rulemaking process with regard to these portions of the proposal is ongoing.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*),

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[104] States may pursue a waiver under section 1332 of the ACA that could waive the "lawfully present" framework in section 1312(f)(3) of the ACA. See 42 U.S.C. 18052(a)(2)(B). There is currently one State (Washington) with an approved section 1332 waiver that includes a waiver of the "lawfully present" framework to the extent necessary to permit all State residents, regardless of immigration status, to enroll in a QHP and QDP through the State's Exchange, as well as to apply for State subsidies to defray the costs of enrolling in such coverage. Consumers who are newly eligible for Exchange coverage under the waiver remain ineligible for PTC for their Exchange coverage. While neither Colorado nor New York requested a waiver of the "lawfully present" framework, both States are permitted to use pass-through funding based on Federal savings from their 1332 waivers to support programs covering immigrants who are ineligible for PTC. Colorado provides premium and cost-sharing subsidies to individuals earning up to 300 percent of FPL who are otherwise ineligible for Federal premium subsidies, including undocumented individuals. Under New York's section 1332 waiver, some immigrants with household incomes up to 200 percent of FPL, including DACA recipients, will be eligible for coverage under the State's EP Expansion plan. Beginning August 1, 2024, DACA recipients with incomes up to 250 percent of FPL will also be eligible for coverage under the State's EP Expansion. For more information on the Colorado, Washington, and New York section 1332 waivers, see *https://www.cms.gov/cciio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers-*.

[105] 42 U.S.C. 18032(f)(3).

[106] 26 U.S.C. 36B(e)(2).

[107] 42 U.S.C. 18082(d).

[108] 42 U.S.C. 18071(e).

[109] 42 U.S.C. 18051(e).

[110] 42 U.S.C. 18032(f)(3), 42 U.S.C. 18071(e)(2).

[111] 42 U.S.C. 18081(c)(2)(B).

we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements.

A. Wage Estimates

To derive average costs in the proposed rule, we used data from the U.S. Department of Labor's Bureau of Labor Statistics' (BLS's) May 2021 National Occupational Employment and Wage Estimates for all salary estimates (*https://www.bls.gov/oes/current/oes_nat.htm*).[112] Since publishing the proposed rule, more recent data has become available, so we are modifying all salary estimates in this final rule to use BLS's May 2023 National Occupational Employment and Wage Estimates (*https://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 1 presents BLS's median hourly wage, our estimated cost of fringe benefits and overhead (calculated at 100 percent of salary), and our adjusted hourly wage.

TABLE 1: National Occupational Employment and Wage Estimates

Occupation Title	Occupational Code	Median Wage ($/hr)	Fringe Benefits and Other Indirect Costs ($/hr)	Adjusted Hourly Wage ($/hr)
Computer Programmer	15-1251	47.94	47.94	95.88
Database and Network Administrator & Architect	15-1240	50.83	50.83	101.66
General and Operations Manager	11-1021	48.69	48.69	97.38
Business Operations Specialist	13-1000	37.74	37.74	75.48
Eligibility Interviewers, Govt Programs	43-4061	24.17	24.17	48.34

For States and the private sector, employee hourly wage estimates have been adjusted by a factor of 100 percent to account for fringe benefits and other indirect costs. This is necessarily a rough adjustment, both because fringe benefits and other indirect costs vary significantly across employers, and because methods of estimating these costs vary widely across studies. Nonetheless, there is no practical alternative, and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

We adopt an hourly value of time based on after-tax wages to quantify the opportunity cost of changes in time use for unpaid activities. This approach matches the default assumptions for valuing changes in time use for individuals undertaking administrative and other tasks on their own time, which are outlined in an Assistant Secretary for Planning and Evaluation (ASPE) report on "Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices." [113] We started with a measurement of the usual weekly earnings of wage and salary workers of $1,117.[114] We divided this weekly rate by 40 hours to calculate an hourly pre-tax wage rate of $27.93. We adjusted this hourly rate downwards by an estimate of the effective tax rate for median income households of about 17 percent, resulting in a post-tax hourly wage rate of $23.18. We adopt this as our estimate of the hourly value of time for changes in time use for unpaid activities.

B. Information Collection Requirements (ICRs)

1. ICRs Regarding Medicaid and CHIP

a. Medicaid and CHIP and the CHIPRA 214 Option (42 CFR 435.4 and 457.320(c))

Changes related to our Medicaid and CHIP proposals related to the CHIPRA 214 option were submitted to OMB for review under OMB Control Number 0938–1147 (CMS–10410). We are not finalizing these provisions at this time and as such, are not updating PRA burden estimates.

We continue to consider the public comments on the Medicaid and CHIP proposals that we received; thus, we are not responding to these comments in the final rule at this time.

b. CHIP Changes Related to the CAA, 2024 (42 CFR 435.4 and 457.320(b))

Since the time of the proposed rule, and as discussed earlier in this final rule, under the CAA, 2024 COFA migrants are now considered qualified noncitizens for the purposes of eligibility for CHIP, effective March 9, 2024, if they meet all other eligibility requirements for CHIP. This change does not impact Medicaid, Exchanges, or BHP. Therefore, we have updated our regulations to reflect the statutory change extending eligibility for CHIP to COFA migrants.

[112] *See* 88 FR 25322 through 25323 for more information on the wage estimates used in the proposed rule.

[113] Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. "Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices." (2017) *https://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-framework.*

[114] U.S. Bureau of Labor Statistics. Employed full time: Median usual weekly nominal earnings (second quartile): Wage and salary workers: 16 years and over [LEU0252881500A], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LEU0252881500A.* Annual Estimate, 2023.

The impact of this change will be very minimal and will impact only those States that have a separate CHIP, and that have not elected the CHIPRA 214 option for at least one population of pregnant individuals or children in their separate CHIPs. Since COFA migrants are already eligible for CHIP in States that have elected the CHIPRA 214 option, as reflected in a 2021 SHO letter,[115] we only estimate impact for States with a separate CHIP that have not elected the CHIPRA 214 option. Using data from the GAO for the most recent year we could obtain,[116] which estimated that the total US population of COFA migrants was 94,000, and then estimating how many may be living in States under the previously described conditions, we estimate approximately 12,225 COFA migrants live in States impacted by this change, primarily within six of those States. Accounting further for how many would actually be eligible under the remaining CHIP eligibility criteria, and then would seek to enroll, we believe the impact of this change to be very minimal. Therefore, and because this change is based on a statutory change and not the result of a policy in this final rule, we are not including more extensive burden estimates in this or section V. of this final rule.

2. ICRs Regarding the BHP (42 CFR 600.5)

The following changes were submitted to OMB for review under OMB Control Number 0938–1218 (CMS–10510).

In the proposed rule, we estimated a one-time burden of 200 hours at a cost of $18,863 for completing the necessary updates to a BHP application. We are modifying the estimates in this final rule to reflect the updated wage estimates as outlined in section IV.A of this final rule. We did not receive public comments on the method of deriving these burden estimates in the proposed rule, and we are therefore finalizing them using the proposed methodology with the updated wage estimates.

The impact of completing the necessary changes to the BHP application is with regards to the two States that will operate BHPs as of the effective date of this rule—Minnesota and Oregon.[117] Although Oregon's BHP is still pending CMS approval, we are including it in our estimate in order to best reflect which States we anticipate may be impacted when this rule becomes effective. We estimate that it will take each State 100 hours to develop and code the changes to its BHP eligibility and verification system to correctly evaluate eligibility under the revised definition of "lawfully present" to include DACA recipients and certain other limited groups of noncitizens as outlined in section II.B.2 of this final rule. This estimate is based on past experience with similar system changes. To be conservative in our estimates, we assume 100 hours per State, but it is important to note that it may take each State less than 100 hours given the overlap in State eligibility and verification systems, as work completed for the State Exchange system may be the same for its BHP.

Of those 100 hours, we estimate it would take a database and network administrator and architect 25 hours at $101.66 per hour and a computer programmer 75 hours at $95.88 per hour. In the aggregate, we estimate a one-time burden of 200 hours (2 States × 100 hours) at a cost of $19,465 (2 States × [(25 hours × $101.66 per hour) + (75 hours × $95.88 per hour)]) for completing the necessary updates to a BHP application.

We note that the policies in this final rule will impose additional costs on BHP agencies to process the applications for individuals impacted hy these policies. Those impacts are accounted for under OMB Control Number 0938–1191 (Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children's Health Insurance Program Agencies (CMS–10440)), discussed in section IV.B.3 of this final rule, which pertains to the streamlined application.

3. ICRs Regarding the Exchanges and Processing Streamlined Applications (45 CFR 152.2 and 155.20, and 42 CFR 600.5)

The following changes were submitted to OMB for review under OMB Control Number 0938–1191 (CMS–10440).

In the proposed rule, we estimated a one-time burden of 1,900 hours at a cost of $179,199 for completing the necessary updates to eligibility and enrollment platforms. We are modifying the estimates in this final rule to reflect the updated wage estimates as outlined in section IV.A of this final rule. As discussed previously, the changes to the definition of "lawfully present" will impact eligibility to enroll in a QHP through an Exchange and for APTC and CSRs. This change applies to the 18 State Exchanges not on the Federal platform, as well as the Federal Government, which will make changes to the Federal eligibility and enrollment platform for the States with Federally-facilitated Exchanges (FFEs) and State-based Exchanges on the Federal platform (SBE–FPs). We estimate that it will take the Federal Government and each of the State Exchanges not on the Federal platform 100 hours in 2024 to develop and code the changes to their eligibility systems to correctly evaluate and verify eligibility under the definition of "lawfully present" that is revised to include DACA recipients and certain other limited groups of noncitizens as outlined in section II.B.2 of this final rule. We do not expect States operating SBE–FPs to incur any implementation costs related to Exchange eligibility and enrollment platform changes. These estimates are based on past experience with similar system changes.

Of those 100 hours, we estimate it would take a database and network administrator and architect 25 hours at $101.66 per hour and a computer programmer 75 hours at $95.88 per hour. In aggregate for the State Exchanges not on the Federal platform, we estimate a one-time burden in 2024 of 1,800 hours (18 State Exchanges × 100 hours) at a cost of $175,185 (18 States × [(25 hours × $101.66 per hour) + (75 hours × $95.88 per hour)]) for completing the necessary updates to State Exchange systems. For the Federal Government, we estimate a one-time burden in 2024 of 100 hours at a cost of $9,733 ((25 hours × $101.66 per hour) + (75 hours × $95.88 per hour)). In total, the hurden associated with all system updates will be 1,900 hours at a cost of $184,918.

"Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Benefits Exchanges, Medicaid and CHIP Agencies," OMB Control Number 0938–1191 (CMS–10440), accounts for burdens associated with the streamlined application for enrollment in the programs impacted hy this rule. As such, the following information collection addresses the burden of processing applications and assisting enrollees with BHP and QHP enrollment, and those impacts are not reflected in the ICRs for BHPs,

[115] *See* SHO #21–005, available at *https://www.medicaid.gov/federal-policy-guidance/downloads/sho21005.pdf.*

[116] Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects, June 2020, available at *https://www.gao.gov/assets/gao-20-491.pdf.*

[117] Minnesota's BHP began January 1, 2015. Oregon's BHP is projected to begin July 1, 2024, and is pending CMS approval. New York suspended its BHP effective April 1, 2024. For more information, see *https://www.medicaid.gov/basic-health-program/index.html.*

discussed in section IV.B.2 of this final rule. In the proposed rule, we estimated that the total burden of application processing and assisting enrollees with Medicaid, CHIP, BHP, and QHP enrollment would be 34,000 hours for a total cost of $1,587,800, where the total burden on States would be 18,397 hours annually at a cost of $859,140, and the total burden on the Federal Government would be 15,603 hours annually at a cost of $728,660. We sought comment on these estimates and the methodology and assumptions used to calculate them. We are updating the estimates in this final rule to reflect that we are not finalizing the proposed changes for Medicaid and CHIP and that we have modified the estimates with the updated wage estimates as outlined in section IV.A of this final rule and the most recent available data on DACA recipients.

For assisting additional eligible enrollees and processing their applications, we estimate this will take a government programs eligibility interviewer 10 minutes (0.17 hours) per application at a rate of $48.34 per hour, for a cost of approximately $8.22 per application. This estimate is based on past experience with similar application changes. As outlined further in section IV.B.4 of this final rule, we anticipate that approximately 147,000 individuals impacted by this final rule will complete the application annually. Therefore, the total application processing burden associated with the policies in this final rule will be 24,990 hours (0.17 hours × 147,000 applications) for a total cost of $1,208,017 (24,990 hours × $48.34 per hour). As discussed further in this section, we anticipate that approximately 52 percent of the application processing burden will fall on States, while the remaining approximately 48 percent will be borne by the Federal Government. We estimate these proportions as follows.

To start, we estimate the percentage of applications that will be processed for the Exchanges and BHPs. We assume that the proportion of applications that will he processed for each program will be equivalent to the proportion of individuals impacted by the policies in this final rule that would enroll in each program. As outlined in section V.C. of this final rule, we estimate that of the 100,000 individuals impacted by the policies in this rule, 99,000 will enroll in the Exchanges (99 percent), and 1,000 (1 percent) in BHPs on average each year, including redeterminations and re-enrollments. Using these same proportions, out of the 147,000 applications anticipated to result from the policies in this final rule, we estimate 145,000 applications will be processed for the Exchanges, and 2,000 will be processed for BHPs on average each year.

Next, we calculate the proportion of each program's application processing costs that are borne by States compared to the Federal Government. The entire information collection burden associated with changes to BHPs falls on the two States with BHPs—Minnesota and Oregon.[118] As such, we assume 100 percent of the BHP application processing costs will fall on these two States. For the Exchanges, we use data from the 2024 Open Enrollment Period to estimate the proportion of applications that are processed by States compared to the Federal Government, and we determined that 49 percent of Exchange applications were submitted to FFEs/SBE–FPs, and are therefore processed by the Federal Government, while 51 percent were submitted to and processed by the 18 State Exchanges not on the Federal platform.[119] As such, we anticipate that 49 percent of Exchange application processing costs will fall on the Federal Government and 51 percent of Exchange application processing costs will fall on States using their own eligibility and enrollment platforms. We do not expect States operating SBE–FPs to incur any application processing costs as these applications, and the costs associated with them, will fall on the Federal Government.

Finally, we apply the proportion of applications we estimated for each program we discussed earlier to the State and Federal burden proportions. Using the per-application processing burden discussed earlier in this ICR (10 minutes, or 0.17 hours, per application at a rate of $48.34 per hour) for BHPs, if we estimate 2,000 applications will be processed, the burden for all of those will be borne hy the States. Using the per-application processing burden of 10 minutes (0.17 hours) per application at a rate of $48.34 per hour, this results in a burden of 340 hours, or $16,436, for States to process BHP applications. For the Exchanges, if we estimate 145,000 applications will be processed, 51 percent of those (73,950) will he processed by State Exchanges not on the Federal platform and 49 percent (71,050) will he processed by the Federal Government. Using the per-application processing burden of 10 minutes (0.17 hours) per application at a rate of $48.34 per hour, this results in a burden of 12,572 hours, or $607,706, for State Exchanges not on the Federal platform and 12,079 hours, or $583,875, for the Federal Government.

Therefore, the total burden on State Exchanges not on the Federal platform to assist eligible beneficiaries and process their applications will be 12,912 hours annually (340 hours for BHP + 12,572 hours for State Exchanges not on the Federal platform) at a cost of $624,142, and the total burden on the Federal Government will be 12,079 hours annually (entirely for Exchanges) at a cost of $583,875.

We received public comments on the estimates outlined in the proposed rule. We are finalizing the proposed methodology of deriving these burden estimates with the updated wage estimates as outlined in section IV.A of this final rule and the most recent available data on DACA recipients and application processing. The following is a summary of the comments we received and our responses.

Comment: Some State Exchanges stated concerns about whether they would he able to implement the rule's provisions by the November 1, 2023 proposed effective date but did not express concern about the overall burden on State agencies of making systems changes or processing new applications for impacted populations.

Response: We understand that some State Exchanges not on the Federal platform will need to make changes to their eligibility and enrollment systems to correctly determine eligibility for DACA recipients and the other individuals impacted by the revised lawfully present definition. We are committed to providing State Exchanges with technical assistance and any additional support needed to ensure that States are able to correctly determine eligihility for DACA recipients and other impacted noncitizens by this final rule's November 1, 2024 effective date. We are also committed to working with State Exchanges not on the Federal platform and BHP agencies to identify any potential manual workarounds that may be needed to correctly determine eligibility prior to full systems changes heing in place.

Comment: Commenters noted that they expected that the technical changes made to the definition of lawfully present discussed in section II.B.2 of this final rule would reduce application processing burdens for State Exchanges in the future, given that they are

[118] Minnesota's BHP began January 1, 2015. Oregon's BHP is projected to begin July 1, 2024, and is pending CMS approval. For more information, see *https://www.medicaid.gov/basic-health-program/index.html.*

[119] Centers for Medicare & Medicaid Services. (2024). 2024 Open Enrollment Report. *https://www.cms.gov/files/document/health-insurance-exchanges-2024-open-enrollment-report-final.pdf.*

expected to make it easier for State Exchanges to verify applicants' lawful presence through DHS SAVE.

Response: We agree that including DACA recipients and making the technical changes discussed in this rule will streamline application processing and make electronic verification of immigration status through SAVE more efficient, by both decreasing DHS' workload in verifying immigration status at Steps Two and Three, which require manual intervention, and by no longer requiring eligibility caseworkers to resubmit a request for additional information or provide additional documentation.

After consideration of public comments, we are finalizing these burden estimates using the proposed methodology with the most recent available data as described above.

4. ICRs Regarding the Application Process for Applicants

The following changes were submitted to OMB for review under OMB Control Number 0938–1191 (CMS–10440).

As required by the ACA, there is one application through which individuals may apply for health coverage in a QHP through an Exchange and for other insurance affordability programs like Medicaid, CHIP, and a BHP.[120] In the proposed rule, we assumed the burden of completing an Exchange application was essentially the same as applying with a State Medicaid or CHIP agency, and therefore we did not distinguish between these populations. In the proposed rule, we estimated the total annual additional burden on all individuals impacted hy the proposed changes by completing the application or submitting documentation to verify their lawful presence would be approximately 163,000 hours with an equivalent cost of approximately $3,375,730. We sought comment on these burden estimates. We are updating the estimates in this final rule to reflect that we are not finalizing the proposed changes for Medicaid and CHIP and to reflect the most recent available data, which includes the updated wage estimates in section IV.A of this rule, and the most recent available data on DACA recipients and open enrollment.

Based on the enrollment projections discussed in the Regulatory Impact Analysis section later in this rule, we anticipate that DACA recipients will represent the majority of individuals impacted by this final rule, and we are unable to quantify the number of non-DACA recipients impacted by the other changes in this rule, but we expect the number to be small. We estimate that there are 147,000 uninsured DACA recipients based on USCIS data on active DACA recipients (545,000 in 2023)[121] and a 2022 survey by the National Immigration Law Center stating that 27 percent of DACA recipients are uninsured,[122] and we assume that 100 percent of uninsured DACA recipients will apply for coverage.[123] As such, we anticipate that approximately 147,000 individuals impacted by the proposals in this rule will complete the application annually.

In the existing information collection request for this application OMB Control Number 0938–1191, we estimate that the application process will take an average of 30 minutes (0.5 hours) to complete for those applying for insurance affordability programs and 15 minutes (0.25 hours) for those applying without consideration for insurance affordability programs.[124] We estimate that of the 147,000 individuals impacted hy the proposed changes, 98 percent will be applying for insurance affordability programs and 2 percent will be applying without consideration for insurance affordability programs. Using the hourly value of time for changes in time use for unpaid activities discussed in section IV.A of this final rule (at an hourly rate of $23.18), the average opportunity cost to an individual for completing this task is estimated to be approximately 0.495 hours ((0.5 hours × 98 percent) + (0.25 hours × 2 percent)) at a cost of $11.47. The total annual additional burden on the 147,000 individuals impacted by the changes in this final rule will be approximately 72,765 hours with an equivalent cost of approximately $1,686,693.

As stated earlier in this final rule, Exchanges and BHP agencies will require individuals completing the application to submit supporting documentation to confirm their lawful presence if they are unable to be verified electronically. An applicant's lawful presence may not be able to be verified electronically if, for example, the applicant opts to not include information about their immigration documentation, such as their alien number or Employment Authorization Document (EAD) number, when they fill out the application. We estimate that of the 147,000 individuals impacted by the changes as finalized, approximately 54 percent (or 79,380) of applicants will be able to have their lawful presence electronically verified, and the remaining 46 percent (or 67,620) of applicants will be unable to have their lawful presence electronically verified and will therefore have to submit supporting documentation to confirm their lawful presence.[125] We estimate that a consumer will, on average, spend approximately 1 hour gathering and submitting required documentation. Using the hourly value of time for changes in time use for unpaid activities discussed in section IV.A of this final rule (at an hourly rate of $23.18), the opportunity cost for an individual to complete this task is estimated to be approximately $23.18. The total annual additional burden on the 67,620 individuals impacted by the changes finalized in this rule who are unahle to electronically verify their lawful presence and therefore need to submit supporting documentation will be approximately 67,620 hours with an equivalent cost of approximately $1,567,432.

As previously stated, for the 147,000 individuals impacted by this rule, the annual additional burden of completing the application will be 0.495 hours per individual on average, which totals to 72,765 hours at a cost of $1,686,693. For the 67,620 individuals who are unable to have their lawful presence electronically verified, the total annual burden of submitting documentation to verify their lawful presence will be 67,620 hours at a cost of $1,567,432. Therefore, the average annual burden per respondent will be 0.955 hours ((0.495 hours × 54 percent of individuals) + (1.495 hours × 46 percent of individuals)), and the total annual

[120] 42 U.S.C. 18083.

[121] Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2023. U.S. Citizenship and Immigration Services. *https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy23_q4.pdf.*

[122] National Immigration Law Center. DACA Recipients' Access to Health Care: *2023 Report.* (2023) *https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf.*

[123] While some individuals impacted by the changes in this final rule may not apply for coverage, we are unable to quantify the proportion of uninsured DACA recipients who would choose not to apply. Because uninsured DACA recipients would likely benefit from becoming insured, we assume 100 percent of DACA recipients will apply for coverage.

[124] It is possible that some individuals impacted by the proposed changes to the definition of lawful presence in this rule would apply using the paper application, but internal CMS data show that this would be less than 1 percent of applications. Therefore, we are using estimates in this analysis to reflect that nearly all applicants would apply using the electronic application.

[125] This estimate is informed by recent data from the FFEs and SBE–FPs. While certain changes proposed in this rule may result in an increase in the proportion of applicants who are able to have their lawful presence electronically verified, we do not have a reliable way to quantify any potential increase.

burden on all of these individuals impacted by the proposed changes in this rule will be 140,385 hours at a cost of $3,254,124.

We received public comments on the estimates outlined in the proposed rule. As previously mentioned, we are updating the estimates in this final rule to reflect that we are not finalizing the proposed changes for Medicaid and CHIP and to reflect the most recent available data. The following is a summary of the comments we received and our responses.

Comment: One commenter agreed with CMS' assumption that regardless of where an individual applies, the burden of completing an application is essentially the same. The commenter further affirmed CMS' statement that, as required by the ACA, there is generally one application through which individuals may apply for health coverage in a QHP through an Exchange and for other insurance affordability programs like a BHP.

Response: We agree that the burden of completing an application is essentially the same regardless of whether the individual was to apply directly with their BHP agency or with an Exchange. As we are not finalizing our proposals related to Medicaid and CHIP at this time, there will not be a change in the application process for Medicaid and CHIP.

Comment: One commenter stated that the changes in the rule "will not result in an increased application burden for impacted individuals."

Response: We have considered this comment and continue to believe that the burden estimates associated with the policies in this final rule are reasonable and in line with the burden estimates in the currently approved PRA package OMB Control Number 0938–1191. However, we acknowledge that the actual application burden may vary depending on the applicant. We are hopeful that the changes in this rule will not overburden individuals in the application process. Additionally, we clarify that as discussed earlier in this ICR section, we submitted the burden changes associated with this ICR to OMB for review under OMB Control Number 0938–1191.

After consideration of public comments, we are finalizing these burden estimates using the methodology as proposed with the most recent available data.

C. Burden Estimate Summary

TABLE 2: Summary of Final Burden Estimates

Regulation Section(s)/ ICR Provision	OMB Control No./ CMS-ID	Year	Number of Respondents	Number of Responses	Time per Response (hrs)	Total Time (hr)	Hourly Labor Rate ($/hr)	Total Labor Cost ($)	State Share ($)	Total Beneficiary Cost ($)
42 CFR 600.5 BHP System Changes	0938–1218 (CMS-10510)	2024	2	2	100	200	Varies	$19,465	$19,465	N/A
45 CFR 152.2 and 155.20 Exchange System Changes	0938-1191 (CMS-10440)	2024	19	19	100	1,900	Varies	$184,918	$175,185	N/A
42 CFR 600.5, 45 CFR 152.2 and 155.20 Streamlined Application Processing	0938-1191 (CMS-10440)	**2025-**2028	147,000	147,000	0.17	24,990	$48.34	$1,208,017	$624,142	N/A
42 CFR 600.5, 45 CFR 152.2 and 155.20 Application Process for Applicants	0938-1191 (CMS-10440)	**2025-2028**	147,000	147,000	0.96	140,385	$23.18	$3,254,124	N/A	$3,254,124

V. Regulatory Impact Analysis

A. Statement of Need

This final rule updates the definition of "lawfully present" in our regulations for certain CMS programs. This definition is currently used to determine whether a consumer is eligible to enroll in a QHP through an Exchange and for APTC and CSRs, and whether a consumer is eligible to enroll in a BHP in States that elect to operate a BHP. In addition, we are removing the exception for DACA recipients from the definitions of "lawfully present" used to determine eligibility to enroll in a QHP through an Exchange or a BHP, and we are instead treating DACA recipients the same as other deferred action recipients. We are also finalizing some modifications to the "lawfully present" definition currently at 45 CFR 152.2 that incorporate additional detail, clarifications, and some technical modifications for the Exchanges and BHPs. We are not finalizing changes to the Medicaid and CHIP programs with respect to the definitions of "lawfully present" at this time.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 on Modernizing Regulatory Review (April

6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a "significant regulatory action" as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review will meaningfully further the President's priorities or the principles set forth in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA.

Based on our estimates, OIRA has determined that this rulemaking is a significant regulatory action under section 3(f)(1) Executive Order 12866. Accordingly, we have prepared a regulatory impact analysis (RIA) that to the best of our ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed these final regulations, and we have provided the following assessment of their impact.

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act, 5 U.S.C 801 *et seq.*), OIRA has determined that this rule does meet the criteria set forth in 5 U.S.C. 804(2). Accordingly, this rule has been submitted to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information.

C. Detailed Economic Analysis

We prepared the economic impact estimates utilizing a baseline of "no action," comparing the effect of the policies against not finalizing the rule at all.

This analysis reviews the amendments finalized under 42 CFR 600.5, and 45 CFR 152.2 and 155.20, which will add the following changes to the definition of lawfully present by making technical modifications to add the following new categories of noncitizens to this definition via this regulation:

- Those granted deferred action under DACA;
- Those granted employment authorization under 8 CFR 274a.12(c)(35) and (36);
- Additional Family Unity beneficiaries;
- Individuals with a pending application for adjustment of status, without regard to whether they have an approved visa petition;
- Children under 14 with a pending application for asylum, withholding of removal, or protection under CAT or children under 14 who are listed as a dependent on a parent's pending application, without regard to the length of time that the application has been pending; and
- Individuals with an approved petition for SIJ classification.

The amendments finalized under 42 CFR 600.5 and 45 CFR 152.2 and 155.20 will also:

- Revise the description of noncitizens who are nonimmigrants to include all nonimmigrants who have a valid and unexpired status;
- Remove individuals with a pending application for asylum, withholding of removal, or CAT protection who are over age 14 from the definition, as these individuals are covered elsewhere; and
- Simplify the definition of noncitizens with an EAD to include all individuals granted employment authorization under 8 CFR 274a.12(c), as these individuals are already covered elsewhere, with the exception of a modest expansion to those granted employment authorization under 8 CFR 274a.12(c)(35) and (36), discussed earlier in this final rule.

In these respects, the technical modifications that do not relate to DACA recipients contained in this rule are generally technical changes or revisions to simplify verification processes, and therefore, we anticipate a modest impact on individuals' eligibility as a result of these changes. We sought comment on estimates or data sources we could use to provide quantitative estimates for the benefit to these individuals. The proposed regulation also adds those granted deferred action under DACA to the definition. As noted further in this section, we estimate that 100,000 DACA recipients will enroll in health coverage and benefit from the proposals in this rule.[126] We are unable to quantify the number of additional Family Unity beneficiaries, individuals with a pending application for adjustment of status, children under age 14 with a pending application for asylum or related protection or children listed as dependents on a parent's application for asylum or related protection, and individuals with approved petition for SIJ classification, or individuals granted employment authorization under 8 CFR 274a.12(c)(35) or (36) that could enroll in health coverage and benefit from the proposals in this rule, but we expect this number to be small. We sought comment on estimates or data sources we could use to provide quantitative estimates for the benefit to these individuals.

The changes to 42 CFR 600.5 will no longer exclude DACA recipients from the definition of "lawfully present" used to determine eligibility for a BHP in those States that elect to operate the program, if otherwise eligible. The changes to 45 CFR 152.2 and 155.20 will make DACA recipients eligible to enroll in a QHP through an Exchange, and for APTC and CSRs, if otherwise eligible. We present enrollment estimates for these populations in Table 3.

[126] The estimates in this RIA are based on DHS' current implementation of the DHS DACA final rule, consistent with the court orders in *Texas* v. *United States*, 50 F.4th 498 (5th Cir. 2022) and *Texas* v. *United States*, 1:18–cv–0068 (S.D. Tex. Oct. 14, 2022), whereby DHS continues to accept the filing of both initial and renewal DACA requests and related applications for employment authorization but is only processing renewal requests.

TABLE 3: Enrollment Estimates by Program, Coverage Years 2024 – 2028

	2024	2025	2026	2027	2028
BHP Enrollment	0	1,000	1,000	1,000	1,000
Exchange Enrollment	0	99,000	85,000	85,000	85,000
Total Enrollment	0	100,000	86,000	86,000	86,000

In the proposed rule, we estimated an enrollment impact of about 129,000.[127] We sought comment on these estimates and the assumptions and methodology used to calculate them. We are modifying the estimates in this final rule to reflect that we are not finalizing the proposed changes for Medicaid and CHIP and to reflect the States that will operate BHPs as of the effective date of this rule and the most recent available data on DACA recipients.[128] [129] To estimate the enrollment impact on the Exchanges and the BHPs, we started with an estimate of the DACA population. USCIS has estimated this count to be 545,000 persons as of September 30, 2023.[130] Based on a 2022 survey from the National Immigration Law Center,[131] roughly 27 percent of DACA recipients were uninsured. In addition, we assume that approximately 70 percent of this group will opt to enroll in the Exchanges and BHPs. This results in an enrollment impact of about 100,000 persons for both the Exchanges and BHP.[132] Based on internal enrollment data, we estimate that 1,000 people will enroll in the BHPs in Minnesota and Oregon,[133] and the remaining 99,000 will enroll in the Exchanges.

The changes to 42 CFR 600.5 will no longer exclude DACA recipients from the definition of lawfully present used to determine eligibility for a BHP in those States that elect to operate the program, if otherwise eligible. There may be an effect on the BHP risk pool as a result of this change, as DACA recipients are relatively younger and healthier than the general population, based on USCIS data showing an average age of 30 years.[134] [135]

The changes to 45 CFR 152.2 and 155.20 will make DACA recipients eligible to enroll in a QHP through an Exchange, and for APTC and CSRs, if otherwise eligible. Similar to BHP eligibility, there may be a slight effect on the States' individual market risk pools. In addition, the modifications to the definition of "lawfully present" discussed in section II.B.2. of this rule will reduce burden on Exchanges and BHPs by allowing them to more frequently verify a noncitizen's status with a trusted source of data and to not have to request additional information from consumers. This change will promote simplicity and consistency in program administration, and further program integrity resulting from the increased reliance on a trusted Federal source of data. We sought comment on estimates or data sources we could use to provide quantitative estimates for this benefit.

In addition, increased access to health coverage for DACA recipients and other noncitizens impacted by the proposals in this rule will ensure increased access to health care services for these populations, which in turn may decrease costs for emergency medical expenditures. Further, the policies in this rule will improve the health and well-being of many individuals that are currently without coverage, as having health insurance makes individuals healthier. Individuals without insurance are less likely to receive preventive or routine health screenings and may delay necessary medical care, incurring high costs and debts. In addition to the improvement of health outcomes, these individuals will be more productive and better able to contribute economically, as studies have found that workers with health insurance are estimated to miss 77 percent fewer workdays than uninsured workers.[136]

We sought comment on these effects and any other potential benefits that may result from the proposals in this rule.

We received public comments on these effects. The following is a summary of the comments we received and our responses.

Comment: Commenters provided comments related to CMS' estimates for the number of individuals who will newly enroll in health insurance coverage through an Exchange, Medicaid, CHIP, or a BHP. Commenters agreed with CMS' assumption that no longer excluding DACA recipients from eligibility for APTC and CSRs would make such individuals more likely to enroll in coverage.

Commenters also offered details specific to their States and localities. One State department of insurance cited an estimate that of the 40,000 uninsured DACA recipients in California with incomes above the Medi-Cal threshold, 30,000 would enroll in subsidized

[127] See 88 FR 25327 through 25329 for a discussion of the proposed enrollment estimates by program.

[128] The Exchange enrollment estimates in this final rule have been updated to account for the DACA recipients that would have enrolled in Medicaid under the policies in the proposed rule but will now enroll in a QHP through an Exchange based on the finalized policies.

[129] The BHP enrollment estimates in the proposed rule assumed that New York and Minnesota would be States impacted by the BHP changes in the proposed rule. The BHP enrollment estimates in this final rule reflect that Minnesota and Oregon will be States impacted by the finalized BHP changes. The data on the number of DACA recipients, as well as the average age of DACA recipients and the percent of DACA recipients that are uninsured has been updated since the proposed rule. See 88 FR 25327 through 25329 for more detail on the estimates in the proposed rule.

[130] Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2023. U.S. Citizenship and Immigration Services. *https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy23_q4.pdf.*

[131] National Immigration Law Center, 2023. DACA Recipients' Access to Health Care: *2023 Report.* (2023). *https://www.nilc.org/wp-content/uploads/2023/05/NILC_DACA-Report_2023.pdf.*

[132] This enrollment estimate does not include DACA recipients who are now expected to be covered under New York's Essential Plan Expansion, effective April 1, 2024, as they will not be impacted by this final rule. For more information, see *https://www.cms.gov/marketplace/states/section-1332-state-innovation-waivers#To%20view%20New%20York's%20application%20materials,%20please%20visit%20the%20New%20York%20waiver%20section%20of%20this%20webpage%20below.*

[133] Minnesota's BHP began January 1, 2015. Oregon's BHP is projected to begin July 1, 2024, and is pending CMS approval. For more information, see *https://www.medicaid.gov/basic-health-program/index.html.*

[134] USCIS. Count of Active DACA Recipients by Month of Current DACA Expiration as of September 30, 2023. *https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy23_q4.pdf.*

[135] In the proposed rule, the available USCIS data at the time showed an average age of 29 years. We sought comment on any estimates or data sources we could use to provide quantitative estimates for the associated effects, including benefit to these individuals. See 88 FR 25328.

[136] Dizioli, Allan and Pinheiro, Roberto. (2016). *Health Insurance as a Productive Factor.* Labour Economics. *https://doi.org/10.1016/j.labeco.2016.03.002.*

coverage through Covered California.[137] One commenter agreed with CMS' assumption that none of the proposed technical changes to the definition of "lawfully present" would result in a significant number of individuals gaining coverage. Nevertheless, the commenter believed that such changes were still important given their potential to significantly benefit impacted individuals and their families, often at very vulnerable points in their lives.

Response: These enrollment projections align with our projections as presented in the proposed rule and in this final rule. As previously stated, we are not finalizing the proposed changes for Medicaid and CHIP at this time, and therefore the enrollment projections in this final rule only reflect the BHP and Exchange enrollment impact. Additionally, we agree that the technical changes to the definition of "lawfully present" are important due to the potential benefit to the individuals and families impacted by these changes.

Comment: Commenters provided detailed analysis of the benefits they expected this rule would convey. These benefits, discussed in detail in section II.B.1., include increased access to care, improved health outcomes, reduced disparities, decreased reliance on uncompensated care and emergency department care, and strengthened workforce, education systems, and local economies. Many commenters pointed out how the provisions of this rule will benefit not only DACA recipients and other impacted noncitizens, but their families and communities as well. Commenters further noted that they believed this rule would improve individual market Exchange risk pools, due to DACA recipients' age and health status as compared to current Exchange enrollees, and that improvements to the risk pool could result in cost savings for health insurance issuers in the form of lower claims costs and for individuals in the form of lower health insurance premiums. One commenter, a nonprofit organization, noted that after New York and California established State-funded Medicaid options for DACA recipients, DACA-eligible individuals were 4 percent more likely to report having health insurance in those States as compared to other States that did not expand eligibility, implying that expanding the insurance affordability programs available to DACA recipients will result in further coverage gains.

Response: We agree that these are potential benefits of the policies finalized in this rule. We appreciate the insight from commenters that the policies in this rule will also benefit the families and communities of the DACA recipients impacted by the rule. We agree that it is possible that this rule could improve the Exchange risk pools, which could result in cost savings for issuers and individuals due to lower claims costs and premiums. We further appreciate the supporting data regarding potential coverage gains in Exchange programs in specific States.

Comment: Commenters, including State government agencies, noted that the proposed changes would result in the more efficient operation of CMS programs. Some commenters specifically stated that changes to the definition of "lawfully present" could streamline practices for caseworkers and eligibility workers at States and agencies.

Response: We agree that the changes we are finalizing will enable Exchanges and BHPs to more easily verify applicants' lawful presence. This should both simplify operations and decrease the proportion of cases in which caseworkers and eligibility workers need to ask consumers to provide additional information.

After consideration of public comments, we are finalizing these estimates using the calculation methodology as proposed with modifications to reflect that we are not finalizing the proposed changes for Medicaid and CHIP and to reflect the States that will operate BHPs as of the effective date of this rule and the most recent available data on DACA recipients.

1. Costs

The changes to 42 CFR 600.5 will treat DACA recipients the same as other recipients of deferred action, who are lawfully present under the definition used to determine eligibility for BHP, if otherwise eligible. The costs to States as a result of information collection changes associated with this proposal, which include initial system changes, costs to develop and update each State's eligibility systems and verification processes, and application processing costs to assist individuals with processing their applications, are discussed in sections IV.B.2. and IV.B.3. of this final rule, and the costs to consumers as a result of increased information collections associated with this policy, which include applying for BHP and submitting additional information to verify their lawful presence, if necessary, are discussed in section IV.B.4. of this final rule. As previously mentioned, we updated the cost estimates discussed in sections IV.B.2., IV.B.3., and IV.B.4. of this final rule to reflect the policies being finalized in this rule and updated data since publishing the proposed rule. States operating a BHP may choose to provide additional outreach to those eligible. In the proposed rule, we included costs related to the fact that a potential increase in the number of enrollees may increase Federal payments to a State's BHP trust fund. For further information, please see the "Transfers" section.

The changes to 45 CFR 152.2 and 155.20 will make DACA recipients eligible to enroll in a QHP through an Exchange, and for PTC and CSRs, if otherwise eligible. The costs to State Exchanges not on the Federal platform and the Federal Government as a result of information collection changes, which include initial system changes costs to develop and update each State's eligibility systems and verification processes and application processing costs to assist individuals with processing their applications, are discussed in section IV.B.3. of this final rule and the costs to consumers as a result of increased information collections associated with this policy, which include applying for Exchange coverage and submitting additional information to verify their lawful presence, if necessary, are discussed in section IV.B.4. of this final rule. This change may result in slightly increased traffic during open enrollment for the 2025 coverage year and beyond. Further, there may be a potential administrative burden on States and regulated entities that choose to conduct outreach and education efforts to ensure that consumers, agents, brokers, and assisters are aware of the changes proposed in this rule associated with the updated definitions of "lawfully present" for the purposes of the Exchanges and BHP. We clarify that CMS does not require States to fund additional outreach and enrollment activities as a result of this rule. Because SBE–FPs will not be required to incur costs related to implementation, application processing, or outreach and education, we estimate no increased costs for States operating SBE–FPs as a result of this rule. We also note that both State Exchanges not on the Federal platform and SBE–FPs may see an increase in the user fees they collect from issuers as a result of increased

[137] Dietz, Miranda; Kadiyala, Srikanth, and Lucia, Laurel; "Extending Covered California subsidies to DACA recipients would fill coverage gap for 40,000 Californians"; UC Berkeley Labor Center; June 6, 2023; *https://laborcenter.berkeley.edu/extending-covered-california-subsidies-to-daca-recipients-would-fill-coverage-gap-for-40000-californians/#_ftn3.*

enrollment due to the policies finalized in this rule. We anticipate that the costs of additional outreach and education that States may choose to pursue would be minimal and sought comment on that assumption.

Whether the effects discussed above as "costs" are appropriately categorized depends on societal resource use. To the extent that resources (for example, labor and equipment associated with provision of medical care) are used differently in the presence of this final rule than in its absence, then the estimated effects are indeed costs. If resource use remains the same but different entities in society pay for them, then the estimated effects would instead be transfers. We requested comment that would facilitate refinement of the effect categorization.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Commenters noted that this regulatory change will enable States that currently use State funds to cover DACA recipients to re-allocate State funding towards covering other uninsured individuals if DACA recipients are able to newly access Federally-funded QHPs. Commenters noted that 11 States and the District of Columbia currently use State-only funds to cover all income-eligible children, regardless of lawful presence status, and that certain additional States also cover pregnant and postpartum individuals. Commenters noted that New York and California currently use State funding to provide coverage to DACA recipients.

One commenter, a State government agency, noted that California currently expends approximately $13 million out of the State's General Fund to cover individuals who do not currently meet CMS' definitions of "lawfully present," and that considering DACA recipients "lawfully present" has the potential to significantly lower or offset funds currently expended for health coverage for DACA recipients.

Response: We appreciate commenters sharing information about how States may otherwise cover this population. As previously mentioned, we are not finalizing the proposed changes for Medicaid and CHIP. However, State funds used to cover DACA recipients eligible for Medicaid/CHIP may be impacted if individuals currently covered under these State-funded programs choose to enroll in QHP or BHP coverage.

Comment: One commenter agreed with CMS' assumption that costs for outreach and education would be "minimal" since the State already conducts robust outreach during its Open Enrollment Period. The commenter stated that they agreed that costs for outreach and education would be "minimal" if supported by Federal financial participation and State funding.

Response: We agree that State Exchanges not on the Federal platform generally conduct robust outreach during their Open Enrollment Periods. We are committed to conducting outreach and education to reach individuals impacted by this rule to educate them that they may he newly eligible for health insurance affordability programs.

Comment: Commenters stated concerns about the costs associated with this rule. Commenters noted that this rule will increase costs to taxpayers and stated that illegal immigration is a net cost to taxpayers of about $151 billion per year, further alleging that illegal immigration costs each American taxpayer $1,156 per year. The commenter also highlighted that the U.S. government spends $2.3 trillion annually on Federal medical expenditures, and that it is "impossible to estimate how many illegal aliens participate in the ACA now, and what level of Federal subsidy they receive," but that they believe this rule will place an "even greater burden" on taxpayers. Commenters stated concerns that this rule will drive the United States further into debt.

Response: We acknowledge commenters' concerns about the costs on the Federal government and Federal taxpayers associated with this rule. We believe the benefits of this rule outweigh the potential negative impacts identified by commenters. The benefits discussed in section V.C. of this final rule, including increased health coverage and a reduction in uncompensated care costs; ensuring equitable access to coverage across all populations served by the programs addressed in this rule, including members of underserved communities; and potential impacts on the risk pool, are important to balance against the costs of the rule identified in this section. Moreover, as clarified previously in this final rule, this rule aims to establish eligibility criteria for Exchanges and BHPs and does not address immigration policy, including DHS' DACA final rule. As discussed previously in this rule, individuals must have their immigration status or category electronically verified by DHS to enroll in Exchange or BHP coverage, which ensures that noncitizens without an eligible immigration status or category are not able to enroll. We therefore decline to make any changes in response to these comments.

Comment: One commenter associated with an academic institution stated concerns that allowing DACA recipients to access subsidized QHPs through Exchanges would increase the prices for non-subsidized health insurance. The commenter cited a JAMA Network Open study that found that between 2011 and 2021, median unsubsidized premium for individual market plans rose by 59 percent. The commenter stated that they saw "little reason to expect that health care unaffordability will slow as government subsidies continue to grow." The commenter further hypothesized that subsidized health insurance programs make unsubsidized health insurance unaffordable because "these programs require buy-in from powerful health care industry groups." They stated that taxpayer money is being channeled to contribute to industry groups' bottom lines, which inflates the cost of unsubsidized health insurance.

Response: We do not agree that allowing DACA recipients to access subsidized QHPs through Exchanges would increase the prices for unsubsidized health insurance. On the contrary, as discussed in section V.C. of this final rule, DACA recipients are generally younger than the average Exchange enrollee and comparably healthy to the general population, and their enrollment has the potential to improve the Exchange risk pool and lower health insurance premiums. Additionally, due to the medical loss ratio (MLR) requirements for issuers participating on the individual market Exchanges, if an issuer spends less than 80 percent of premiums on medical care and efforts to improve quality of care, it must refund this money to enrollees. These MLR requirements prevent excess contributions to "industry groups' bottom lines" and protects subsidized and unsubsidized consumers alike from premiums that are too high and are not spent on medical care and quality initiatives.

Comment: Commenters believe that U.S. tax dollars should not be spent on providing benefits, including health care benefits, to DACA recipients or other noncitizens. Commenters stated that they already face high tax burdens, and that tax revenue should be directed towards meeting the health care needs of other vulnerable groups, including senior citizens, members of the military, and veterans. Commenters also stated that the U.S. government already spends too much money, is $31 trillion in debt, and that our system is on the verge of bankruptcy. Commenters believe that

this proposed rule sets a bad precedent for expanding health care to individuals who are physically present in the United States without a valid immigration status, and that we cannot both be fiscally responsible and provide health care to noncitizens, citing Illinois as an example. Some commenters stated their belief that immigration reform is needed to stop this process from expanding to other immigrant populations. One commenter stated their belief that the parents of DACA recipients should be responsible for their children's wellbeing and provide a specific plan for obtaining independence, rather than the U.S. government being held responsible and providing government funded programs. Another commenter believes that there should be more accountability for those that use government sponsored public benefit programs.

Response: Although some of these comments are out of scope, we acknowledge the concerns noted by some commenters about the allocation of U.S. tax dollars and would like to clarify that allocating tax dollars is the purview of the Congress. As previously mentioned, the purpose of this final rule is to establish eligibility requirements for Exchanges and BHPs rather than dictate where tax dollars are directed. Moreover, as mentioned previously in this final rule, noncitizens must have their immigration status or category electronically verified by DHS to enroll in the specified insurance affordability programs, which ensures that noncitizens without an eligible immigration status or category are not able to enroll. Additionally, we would like to emphasize that immigration reform and parental responsibility are outside of our purview and the scope of this rule. Finally, we are engaged in many accountability initiatives for our programs, including APTC and CSR audits, which verify the enrollment of qualified individuals and the subsidies they receive. We welcome suggestions from interested parties regarding accountability for CMS programs.

After consideration of public comments, we are finalizing these cost estimates as discussed in section IV.B of this final rule.

2. Transfers

Transfers are payments between persons or groups that do not affect the total resources available to society. They are a benefit to recipients and a cost to payers.

The changes to 42 CFR 600.5 will treat DACA recipients the same as other recipients of deferred action, who are lawfully present under the definition used to determine eligibility for BHP, if otherwise eligible. Due to a potential increase in the number of enrollees, there may be an increase in Federal payments to a State's BHP trust fund, which represents a transfer.

We discuss how we calculated our BHP enrollment estimates earlier in this RIA. Federal funding for a BHP under section 1331(d)(3)(A) of the ACA is based on the amount of the PTC allowed and payments to cover required CSRs that would have been provided for the fiscal year to eligible individuals enrolled in BHP standard health plans in the State if such eligible individuals were allowed to enroll in a QHP through an Exchange.[138] These funds are paid to trusts established by the States and dedicated to the BHP, and the States then administer the payments to standard health plans within the BHP. In the proposed rule, to calculate costs, we used 2022 data from USCIS to determine the average age of a DACA recipient, which was 29, and we used PTC data to determine the average PTC for a 29-year-old, which was estimated to be $289 per month, and multiplied this by 12 months per year and by the projected number of enrollees per year to arrive at annual costs. We are modifying the costs in this final rule to use updated data.[139] Therefore, to calculate costs, we use 2023 data from USCIS to determine the average age of a DACA recipient, which is 30, and we use PTC data to determine the average PTC for a 30-year-old, which is estimated to be $274 per month, and multiplied this by 12 months per year and by the projected number of enrollees eligible for PTC to arrive at annual costs.[140] Our estimates for BHP expenditures as a result of the policies in this rule are shown in Table 4. We sought comment on these estimates and the assumptions and methodology used to calculate them.

TABLE 4: BHP Projected Expenditures, FY 2024 – 2028

	2024	2025	2026	2027	2028
Expenditures	$0	$5,000,000	$5,000,000	$5,000,000	$5,000,000

The policies at 45 CFR 152.2 and 155.20 will generate a transfer from the Federal Government to consumers in the form of increased PTC payments due to individuals who will be eligible for Exchange coverage and APTC based on the policies in this final rule.

We discuss how we calculated our Exchange enrollment estimates earlier in this RIA. In the proposed rule, to calculate costs, we used 2022 data from USCIS to determine the average age of a DACA recipient, which was 29. For 2024, the average PTC for a 29-year-old was estimated to be $289 per month. We multiplied this by 12 months per FY and by the number of enrollees to arrive at annual costs. We are modifying the costs in this final rule to use updated data. Therefore, to calculate costs, we use 2023 data from USCIS to determine the average age of a DACA recipient, which is 30. For 2025, the average PTC for a 30-year-old is estimated to be $274 per month, and we multiplied this by 12 months per FY and by the projected number of enrollees eligible for PTC to

[138] On October 11, 2017, the Attorney General of the United States provided HHS and the Department of the Treasury (the Departments) with a legal opinion indicating that the permanent appropriation at 31 U.S.C. 1324, from which the Departments had historically drawn funds to make CSR payments, cannot be used to fund CSR payments to insurers. In light of this opinion—and in the absence of any other appropriation that could be used to fund CSR payments—HHS directed CMS to discontinue CSR payments to issuers until the Congress provides for an appropriation. See *https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf* for more information. In the absence of a Congressional appropriation for Federal funding for CSR payments, we cannot provide States with a Federal payment attributable to CSRs that would have been paid on behalf of BHP enrollees had they been enrolled in a QHP through an Exchange.

[139] These costs also reflect that the two States that will operate a BHP when these policies go into effect are Minnesota and Oregon rather than Minnesota and New York as anticipated in the proposed rule.

[140] The estimate for FY 2025 only includes 11 months, assuming these individuals will enroll in a BHP beginning November 1, 2024, as the BHPs included in this analysis have, or are anticipated to have, continuous enrollment. We project no change in Federal BHP expenditures for FY 2024 as this rule will not take effect until FY 2025.

arrive at annual costs.[141] These costs are projected to increase using the trends assumed in the President's FY 2025 Budget.

We present these estimates in Table 5 and sought comment on the estimates and the assumptions and methodology used to calculate them.

TABLE 5: Exchange Projected Expenditures, FY 2024 – 2028

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
PTC Expenditures	$0	$240,000,000	$300,000,000	$290,000,000	$300,000,000

We did not receive public comments on the transfers estimated in this rule specific to PTC expenditures, and therefore, we are finalizing these estimates with modifications as described previously in this section.

3. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret the proposed rule, we estimate the cost associated with regulatory review. There is uncertainty involved with accurately quantifying the number of entities that would review the rule. However, for the purposes of this final rule, we assume that the total number of unique commenters on the proposed rule (284) will be the number of reviewers of this final rule.

Using the median wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $106.42 per hour, including overhead and fringe benefits. Assuming an average reading speed of 250 words per minute, we estimate that it will take approximately 3.3 hours for each individual to review the entire final rule (approximately 49,000 words/250 words per minute = 196 minutes). Therefore, we estimate that the total one-time cost of reviewing this regulation is approximately $99,737 ([$106.42 × 3.3 hours per individual review] × 284 reviewers).

D. Regulatory Alternatives Considered

In developing this rule, we considered not proposing or finalizing the technical and clarifying changes to our definitions of "lawfully present," discussed in section II.B.2 of the proposed rule, as these changes are expected to impact fewer individuals than the proposal to treat DACA recipients the same as other recipients of deferred action. However, in our comprehensive review of current CMS definitions of "lawfully present," we determined that the proposed and finalized changes discussed in section II.B.2 of this final rule will simplify verification of applicants' immigration status or category, our eligibility determination processes and increase efficiencies for individuals seeking health coverage and State and Federal entities administrating insurance affordability programs. Additionally, the small number of individuals included in the proposed eligibility categories will benefit from increased access to health coverage through the Exchange or a BHP.

In the proposed rule, we sought comments on these proposals, and we respond to those comments in the associated preamble sections of this final rule. As discussed in those preamble sections, we are finalizing the Exchange and BHP policies as discussed in the associated sections of this final rule, and not finalizing the Medicaid and CHIP proposals at this time.

E. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*), we have prepared an accounting statement in Table 6 showing the classification of the impact associated with the provisions of the final rule. We prepared these impact estimates utilizing a baseline of "no action," comparing the effect of the proposals against not proposing the rule at all.

The final rule finalizes standards for programs that will have numerous effects, including allowing DACA recipients to be treated the same as other deferred action recipients for specific health insurance affordability programs, and increasing access to affordable health insurance coverage. The effects in Table 6 reflect a qualitative assessment of impacts and the estimated direct monetary costs and transfers resulting from the provisions of the final rule for the Federal Government, State Exchanges, BHPs, and consumers.

[141] The estimate for FY 2025 only includes 9 months, assuming these individuals will enroll in a QHP beginning January 1, 2025. It is possible that individuals impacted by this rule could enroll in coverage effective December 1, 2024, but we do not have a reliable way to estimate how many individuals would enroll with that coverage effective date. Therefore, we project no change in PTC expenditures in FY 2024.

TABLE 6: Accounting Table

Benefits:

Qualitative:

- Additional enrollment in the BHP, anticipated to be 1,000 individuals annually beginning in 2025.
- Additional enrollment in the Exchanges, which will be subsidized depending on individuals' household incomes, anticipated to be 99,000 individuals in 2025 and 85,000 individuals annually beginning in 2026.
- Increased access to health coverage for DACA recipients and certain other noncitizens, which will mitigate existing disparities in access to care, which in turn may also decrease costs for emergency medical expenditures.
- Improved health and well-being of many DACA recipients and certain other noncitizens currently without health care coverage.
- Greater economic contribution and productivity of DACA recipients and certain other noncitizens from improving their health outcomes.
- Reduced burden on Exchanges and BHPs to determine applicants' immigration statuses.

Costs:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized Monetized ($/year)	$3.52 Million	2024	7 percent	2024-2028
	$3.59 Million	2024	3 percent	2024-2028

Quantitative:

- System changes costs estimated at $19,465 in 2024 for States that operate a BHP to develop and code changes to their eligibility systems and verification processes to include the categories of noncitizens impacted by this final rule for BHP eligibility.
- System changes costs estimated at $175,185 for State Exchanges not on the Federal platform and $9,733 for the Federal Government in 2024 to develop and code changes to each Exchange's eligibility systems and verification processes to include the categories of noncitizens impacted by this final rule for Exchange and Exchange-related subsidy eligibility.
- Application processing costs estimated at $624,142 for States (excluding States operating SBE-FPs) and $583,875 for the Federal Government per year starting in 2025 to assist individuals impacted by this final rule with processing their applications.
- Costs to individuals impacted by the proposals in this rule of $3,254,124 per year starting in 2025 to apply for BHP or Exchange health coverage, including costs to submit additional information to verify their lawful presence status if it is unable to be verified electronically through the application.

Transfers:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized Monetized ($/year)	$220.84 Million	2024	7 percent	2024-2028
	$226.05 Million	2024	3 percent	2024-2028

Quantitative:

- Increased Federal BHP expenditures of $5 million annually beginning in 2025 due to increased enrollment as a result of changes to the definition of "lawfully present" for purposes of a BHP finalized in this rule.
- Increased PTC expenditures from the Federal Government to individuals of $240 million in 2025, $300 million in 2026, $290 million in 2027, and $300 million in 2028 due to increased enrollment and subsidy eligibility as a result of the changes to the definition of "lawfully present" for purposes of the Exchanges finalized in this rule.

F. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimated that small businesses, nonprofit organizations, and small governmental jurisdictions are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities, either because they are nonprofit organizations, or they meet the Small Business Administration (SBA) definition of a small business (having revenues of less than $8.0 million to $41.5 million in any 1 year). Individuals and States are not included in the definition of a small entity.

For purposes of the RFA, we believe that health insurance issuers and group health plans will be classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of

$47 million or less would be considered small entities for these NAICS codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $44.5 million or less.[142] We believe that few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds. Based on data from medical loss ratio (MLR) annual report submissions for the 2021 MLR reporting year, approximately 87 out of 483 issuers of health insurance coverage nationwide had total premium revenue of $47 million or less.[143] This estimate may overstate the actual number of small health insurance issuers that may be affected, since over 77 percent of these small issuers belong to larger holding groups, and many, if not all, of these small companies are likely to have non-health lines of business that will result in their revenues exceeding $47 million.

In this final rule, we are finalizing standards for eligibility for Exchange enrollment, APTC and CSRs, and BHP enrollment. Because we believe that insurance firms offering comprehensive health insurance policies generally exceed the size thresholds for "small entities" established by the SBA, we did not believe that an initial regulatory flexibility analysis is required for such firms and therefore do not believe a final regulatory flexibility analysis is required. Furthermore, the policies related to BHPs involve State governments, but as States do not constitute small entities under the statutory definition, an impact analysis for that provision is not required under the RFA.

As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than three to five percent. We do not believe that this threshold will be reached by the requirements in this final rule. Therefore, the Secretary has certified that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. While this rule is not subject to section 1102 of the Act, we have determined that the final rule will not adversely affect small rural hospitals. Therefore, the Secretary has certified that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

[142] Available at *https://www.sba.gov/document/support--table-size-standards.*

[143] Available at *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html.*

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. Based on information currently available, we expect the combined impact on State, local, or Tribal governments and the private sector does not meet the UMRA definition of unfunded mandate.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications.

While developing this rule, we attempted to balance States' interests in running their own Exchanges and BHPs with CMS' interest in establishing a consistent definition of "lawfully present" for use in eligibility determinations across our programs, to the extent possible. We also attempted to balance States' interests with the overall goals of the ACA, as well as the goals and provisions of the DHS DACA final rule. By doing so, we complied with the requirements of E.O. 13132.

In our view, while the provisions of this final rule related to the Exchanges (45 CFR 152.2 and 155.20) and BHPs (42 CFR 600.5) will not impose any requirement costs on State and local governments that do not operate their own Exchanges, or that operate SBE–FPs, this regulation has federalism implications for other States. State Exchanges not on the Federal platform and BHPs will be required to update their eligibility systems to accurately evaluate applicants' lawful presence. State Exchanges not on the Federal platform and BHPs may wish to conduct outreach to groups such as DACA recipients who will newly be considered lawfully present under the rule. By our estimate, these requirements do not impose substantial direct costs on the affected States, which in any event have chosen to operate their own Exchanges and eligibility and enrollment platforms, or the optional BHP. After establishment, Exchanges must be financially self-sustaining, with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers, and as indicated earlier, a BHP is optional for States. Therefore, if implemented in a State, a BHP provides access to a pool of Federal funding that will not otherwise be available to the State. States that do not have a BHP and do not operate their own Exchange, including SBE–FP States, are not expected to incur any costs as a result of this rule.

We included policies in the proposed rule related to Medicaid and CHIP that might have imposed substantial direct costs on State governments. However, as discussed earlier in this rule, we are not finalizing those provisions at this time and therefore they do not have federalism implications.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on April 15, 2024.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

42 CFR Part 600

Administrative practice and procedure, Health care, health insurance, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 152

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 155

Administrative practice and procedure, Advertising, Aged, Brokers, Citizenship and naturalization, Civil

rights, Conflicts of interests, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Sex discrimination, State and local governments, Taxes, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below.

Title 42—Public Health

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 1. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 1302.

PART 435 [Amended]

■ 2. Part 435 is amended by—

■ a. Removing all instances of the words "non-citizen" and "non-citizens" and adding in their places the words "noncitizen" and "noncitizens", respectively; and

■ b. Removing all instances of the words "Qualified Non-citizen" and adding in their place the words "qualified noncitizen".

■ 3. Section 435.4 is amended by revising the definition of "Qualified noncitizen" to read as follows:

§ 435.4 Definitions and use of terms.

* * * * *

Qualified noncitizen means:

(1) a "Qualified alien," as defined in 8 U.S.C. 1641(b) and (c); who is:

(i) A noncitizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 *et seq.*];

(ii) A noncitizen who is granted asylum under section 208 of such Act [8 U.S.C. 1158];

(iii) A refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157];

(iv) A noncitizen who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year;

(v) A noncitizen whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208);

(vi) A noncitizen who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980;

(vii) A noncitizen who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(viii) An individual who lawfully resides in the United States in accordance with a Compact of Free Association referred to in 8 U.S.C. 1612(b)(2)(G);

(ix) A noncitizen who—

(A) Has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) Has been approved or has a petition pending which sets forth a prima facie case for—

(*1*) Status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)];

(*2*) Classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)];

(*3*) Suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996);

(*4*) Status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)]; or

(*5*) Cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)];

(x) A noncitizen—

(A) Whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) Who meets the requirement of 8 U.S.C. 1641(c)(1)(B);

(xi) A noncitizen child who—

(A) Resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a memher of the spouse's family residing in the same houschold as the parent and the spouse consented or acquiesced to such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the henefits to be provided; and

(B) Who meets the requirement of 8 U.S.C. 1641(c)(1)(B); or

(xii) A noncitizen who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

(2) Noncitizens who are treated as refugees under other Federal statutes:

(i) Noncitizens who are victims of a severe form of trafficking in persons, as described in 22 U.S.C. 7105(b)(1)(C), or who are classified as nonimmigrants under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)(ii)), pursuant to 22 U.S.C. 7105(b)(1)(A);

(ii) Iraqi and Afghan special immigrants, as described in Public Law 110–181, section 1244(g) (2008), Public Law 111–8, section 602(b)(8) (2009), Public Law 111–118, section 8120(b) (2010), and Public Law 113–291, section 1227 (2014);

(iii) Amerasian immigrants, described in Public Law 100–202, section 101(e) (8 U.S.C. 1101 note);

(iv) Certain Afghan parolees, in accordance with Section 2502 of Public Law 117–43, as amended; and

(v) Certain Ukrainian parolees, in accordance with Section 401 of Public Law 117–128, as amended.

* * * * *

■ 4. Section 435.406 is amended by—

■ a. Removing all instances of the words "non-citizen" and "non-citizens" and adding in their places the words "noncitizen" and "noncitizens", respectively; and

■ b. Removing all instances of the words "Qualified Non-Citizen" and adding in its place the words "qualified noncitizen".

■ c. Revising paragraph (a)(2)(i).

The revision reads as follows:

§ 435.406 Citizenship and noncitizen eligibility.

(a) * * *

(2)(i) Except as specified in 8 U.S.C. 1612(b)(1) (permitting States an option with respect to coverage of certain qualified noncitizens), qualified noncitizens as described in 42 CFR 435.4 (including qualified noncitizens subject to the 5-year bar) who have provided satisfactory documentary evidence of qualified noncitizen status, which status has been verified with the Department of Homeland Security (DHS) under a declaration required by section 1137(d) of the Act that the applicant or beneficiary is a noncitizen in a satisfactory immigration status.

* * * * *

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 5. The authority citation for part 457 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 6. Section 457.320 is amended by—

■ a. Removing all instances of the words "qualified aliens" and adding in its place the words "qualified noncitizens";

■ b. Revising paragraphs (h)(6); and

■ c. Adding paragraph (c).

The revision and addition read as follows:

§ 457.320 Other eligibility standards.

* * * * *

(b) * * *

(6) Exclude individuals based on citizenship or nationality, to the extent that the children are U.S. citizens, U.S. nationals or qualified noncitizens (as defined at paragraph (c) of this section); or

* * * * *

(c) *Definitions.* As used in this subpart:

Qualified noncitizen has the meaning assigned at § 435.4 of this chapter.

* * * * *

PART 600—ADMINISTRATION, ELIGIBILITY, ESSENTIAL HEALTH BENEFITS, PERFORMANCE STANDARDS, SERVICE DELIVERY REQUIREMENTS, PREMIUM AND COST SHARING, ALLOTMENTS, AND RECONCILIATION

■ 7. The authority citation for part 600 continues to read as follows:

Authority: Section 1331 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, 124 Stat. 119), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, 124 Stat 1029).

■ 8. Section 600.5 is amended by revising the definition of "Lawfully present" to read as follows:

§ 600.5 Definitions and use of terms.

* * * * *

Lawfully present has the meaning given in 45 CFR 155.20.

* * * * *

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter B, as set forth below.

Title 45—Public Welfare

PART 152—PRE–EXISTING CONDITION INSURANCE PLAN PROGRAM

■ 9. The authority citation for part 152 continues to read as follows:

Authority: Sec. 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

■ 10. Section 152.2 is amended by revising the definition of "Lawfully present" to read as follows:

§ 152.2 Definitions.

* * * * *

Lawfully present has the meaning given the term at 45 CFR 155.20.

* * * * *

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 11. The authority citation for part 155 continues to read as follows:

Authority: 42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

■ 12. Section 155.20 is amended by revising the definition of "Lawfully present" to read as follows:

§ 155.20 Definitions.

* * * * *

Lawfully present means a noncitizen who—

(1) Is a qualified noncitizen as defined at 42 CFR 435.4;

(2) Is in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17));

(3) Is paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than 1 year, except for a noncitizen paroled for prosecution, for deferred inspection or pending removal proceedings;

(4) Is granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a;

(5) Is granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a;

(6) Is granted employment authorization under 8 CFR 274a.12(c);

(7) Is a Family Unity beneficiary in accordance with section 301 of Pub. L. 101–649 as amended; or section 1504 of the LIFE Act Amendments of 2000, title XV of H.R. 5666, enacted by reference in Pub. L. 106–554 (see section 1504 of App. D to Pub. L. 106–554);

(8) Is covered by Deferred Enforced Departure (DED) in accordance with a decision made by the President;

(9) Is granted deferred action, including but not limited to individuals granted deferred action under 8 CFR 236.22;

(10) Has a pending application for adjustment of status;

(11)(i) Has a pending application for asylum under 8 U.S.C. 1158, for withholding of removal under 8 U.S.C. 1231(b)(3)(A), or for protection under the regulations implementing the Convention Against Torture; and

(ii) Is under the age of 14;

(12) Has been granted withholding of removal under the regulations implementing the Convention Against Torture; or

(13) Has a pending or approved petition for Special Immigrant Juvenile classification as described in 8 U.S.C. 1101(a)(27)(J).

* * * * *

■ 13. Section 155.30 is added to read as follows:

§ 155.30 Severability.

(a) Any part of the definition of "lawfully present" in § 155.20 held to be invalid or unenforceable, including as applied to any person or circumstance, shall be construed so as

to continue to give the maximum effect to the provision as permitted by law, along with other provisions not found invalid or unenforceable, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

(b) The provisions in § 155.20 with respect to the definition of "lawfully present" are intended to be severable from one another.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–09661 Filed 5–3–24; 6:45 am]

BILLING CODE 4120–01–P

Mr. GROTHMAN. Thank you very much. Now, Mr. Bier, at the end there, you heard the testimony earlier today, the number of freebies that are being given away, particularly in the parole program from Haiti and Mexico, people immediately eligible, I take it, for low-income housing, food stamps, medical care. Does this concern you when we are giving away these amounts of Earned Income Tax Credit, which I consider a horrible program with all sorts of reverse incentives?

Mr. BIER. It is totally unnecessary. We could not spend that money, rebate it to taxpayers. There is no reason why we need to do this. If we don't want to spend the money, don't spend the money, and I know you have a bill that would do just that, but it is a choice. It is a choice and so far, all of the immigration bills that have come out of the House of Representatives, none of them have dealt with this issue. So, it is an issue, but it is not one that changes the immigration from——

Mr. GROTHMAN. You are right. This is——

Mr. BIER. Good to bad.

Mr. GROTHMAN. This is the best bill. You should talk to Speaker Johnson on it when you go out the building. In a hearing I was at a little while ago, someone testified that the number of people in prisons in Venezuela has dropped 20 percent over, I don't know, the last year or so, and apparently the President of Venezuela himself has kind of bragged a little bit that he is sending the criminal element here. Is that a possible concern when you have anybody who wants coming across the border instead of picking your immigrants?

Mr. BIER. Well, it is certainly a concern. That is why we have Border Patrol to interdict those people and, of course, screen them, and, you know, if they are a criminal threat, they should be removed. I don't trust anything the Maduro government says. So, whatever information you are getting from them, I would question that.

Mr. GROTHMAN. Well——

Mr. BIER. But you should, you should really take information from a credible source, not from——

Mr. GROTHMAN. Yeah.

Mr. BIER. A socialist government.

Mr. GROTHMAN. I will point out, you understand that when these people come across the southern border, we can try to check and see if they have a criminal record in the U.S. and Canada. There is no way to find out whether they have a criminal record even from Mexico, much less from Venezuela or——

Mr. BIER. Well, almost none of the people come directly from Venezuela. They spend time in these other countries where we do have information sharing agreements. They are——

Mr. GROTHMAN. Right.

Mr. BIER [continuing]. Getting their fingerprints checked in Panama and all along the way. So, it is a concern. We should obviously have strict security and make sure that we are vetting people, but the idea that this turns it from, oh, we have to keep out every Venezuelan from the United States is not true.

Mr. GROTHMAN. No, no, I——

Mr. BIER. Venezuelans have a much lower incarceration rate in the United States than U.S. born persons do, according to the American Community Survey. So, the idea that we need to just ban an entire nationality because there are some uncertainties here is just not a reasonable conclusion.

Mr. GROTHMAN. I am going to ask Ms. Kirchner to give us some information on stuff that people who come here, either parole or we will refer to as illegally, are immediately eligible for and what you think that does to the cross-section of people who are currently coming here?

Ms. KIRCHNER. Well, sir, those who come here illegally, it depends how they are released, and this is one of the ways the Biden Administration has significantly exacerbated the problem. So, if you are released through parole, parole is given a status under our benefits programs much like that of a legal permanent resident, and we know that there are millions of parolees. We don't know the exact amount. I am waiting for the latest report to come out, but we know that there are millions of parolees, and because they are considered lawfully present, even though they have no legal status, they are immediately eligible for work permits, they are eligible for Social Security numbers, they are eligible for Obamacare, and that also, the Social Security number opens up the box to tax benefits, Earned Income Tax Credit, and the additional Child Tax Credit, but where we are really going to see the cost, these parolees, because they are treated like legal permanent residents, some of them immediately get benefits. The Cubans and Haitians, as I said, are immediately eligible for everything, but the chickens will come home to roost in about five years when all of these other parolees who are not Cubans and Haitians are going to be eligible for everything, and so, we need to be aware that without adding one illegal alien crossing the border, the costs are going to go up.

Mr. GROTHMAN. Okay. Thank you. I just want to get in a last word on something. I have been down to the border several times, and whenever I am down there, the Border Patrol points out that unless you have a criminal record from the U.S. or Canada, there is no way for them to determine whether or not you have a record. That is what they are telling me. And——

Mr. BIER. I mean, you should look at some of the CBP press releases that they put out when they catch people from Columbia or other countries, so.

[The information follows:]

Total Governmental Expenditures on Illegal Aliens



Total Federal Expenditures
$66,449,136,000

Total State & Local Expenditures
$115,608,730,000

Total National Expenditures
$182,057,865,000

Total Tax Contributions by Illegal Aliens



Total Federal Taxes Paid
$16,219,495,000

Total State & Local Taxes Paid
$15,172,140,000

Total Tax Contributions
$31,391,635,000

Total Economic Impact of Illegal Immigration



Total National Expenditures
$182,057,865,000

Total Tax Contributions
$31,391,635,000

Total Burden on Taxpayers
$150,666,230,000

Chairman ARRINGTON. The gentleman's time has expired. I don't need help, but I know there is a lot of folks that like to give me help. Jimmy, why don't you help me out?

Mr. PANETTA. I will.

Chairman ARRINGTON. Take five minutes.

Mr. PANETTA. I will try, Mr. Chairman.

Chairman ARRINGTON. Take five minutes, and I may give you a little extra, too, if it is an interesting and intellectually honest conversation.

Mr. PANETTA. I can't promise you that, but thank you, Mr. Chairman, I appreciate this opportunity, and Ranking Member, and gentlemen, and ma'am, thank you very much for being here. Look, I think we can all agree upon a couple of things that obviously, when it comes to immigration, it is a very emotional issue. I think it is emotional because we are all connected to it in one way or the other, especially in this country. Yes, as I agree with the Ranking Member, we are a nation of immigrants, but I will go one step further. We are a nation of risk takers, people who are willing to take the risk to come here to provide a better life, either for themselves or for their children, and ultimately, I firmly believe, as the grandson of immigrants, that is the American dream. That is why people still want to come here. Not to rape, not to pillage, but they want to provide a better life for them and their families, and I think we are so damn lucky to have that, to have, to be a country like that where people still want to come here, and I think that is part of the emotions behind this.

But look, I think we can all agree in this room and outside of this room, there is a crisis at the border. We get it. Got it. Check. We understand that. From a humanitarian, a familial, a criminal, and a financial crisis that we are facing at this point.

But rather than just continue to talk about the issues, we want to make sure we talk about solutions. Unfortunately, especially here in the United States Congress, especially in this political world, when we talk about solutions, it is difficult. It is difficult because what I have seen in my limited time that I have been here in Congress, immigration reform, border security, is the most politically toxic, policy complicated issue I have worked on. Unfortunately. Unfortunately.

In the seven and a half years that I have been here, we have tried, though. We have tried and we have actually had some successes.

I think we have agreed, Jodey. Sorry, Mr. Chairman. In the time that we have been here, I think we have voted on $120 million in border security that went to infrastructure, technology, and personnel. We also got some places when it came to immigration reform, not necessarily comprehensive immigration reform, we realized that was difficult, but we kind of backed off and we looked at it piecemeal.

We did the Farm Workforce Modernization Act. One of my proudest things that I personally worked on, yet just as fulfilling it was frustrating, because it was the most bipartisan immigration bill passed out of the House of Representatives in the last two decades. Unfortunately, it got stalled in the Senate. I am going to get back to you, Mr. Bier, on that in a second.

We had the Dream and the Promise Act as well, and then, of course, we had potentially what happened in the last few months, that Senate deal, that, and I got to give a lot of credit to one of my conservative colleagues in the Senate, James Lankford, and one of my most liberal colleagues in the Senate, Murphy from Connecticut, a very conservative deal that would have provided funding, would have provided infrastructure, would have provided personnel, would have raised the standards of asylum, an issue that we are dealing with at the border that is causing the most consternation there and difficulties there, but unfortunately, it was rejected by the leader of the Republican Party, Donald Trump, and therefore no other Republican would go with it.

So, it is obviously difficult, but I think when you have people who have the political will to come up with solutions, we can actually do this, not just rag on each other when it comes to the issues. We got it, we get it, but we got to make sure that we talk about solutions.

I believe one of the solutions with the Farm Workforce Modernization Act, I say that because of the district that I represent on the Central Coast of California, I have seen, not just familially, I have seen in my neighborhood, in my community, immigrants who have come here who want to contribute, and we know what it is like out there picking strawberries. We know what it is like in slaughterhouses. We know what it is like now in construction yards. You do not see too many native-born Americans doing that type of work.

And so, Mr. Bier, I want to address my question to you as to what type of effect, when you look at our agriculture, who is doing those jobs these days?

Mr. BIER. Look, it is, right now, most of the increase in our agricultural workforce is coming through the H–2A guestworker visa program. So, these are temporary seasonal workers. Unfortunately, those jobs, that visa category is not available for any job that is year-round. So, if you have a farm and you are planning year-round and that job, that worker that you need is year-round, that visa is unavailable. That is one of the things the Farm Workforce Modernization Act would have relaxed that rule and allowed people to work in year-round agriculture. So, that is where a lot of the illegal immigration and illegal employment ultimately is going because there is no legal way for people to hire through that program.

So, if you get rid of the workers, I mean, you are talking about half of the agricultural labor force is just immigrants——

Mr. PANETTA. That——

Mr. BIER [continuing]. Forgetting about their children——

Mr. PANETTA. You know as well as I do, that is a generous number.

Mr. BIER. Yeah, yeah, yeah. Well, all these estimates are ballparks.

Mr. PANETTA. Exactly, exactly.

Mr. BIER. So.

Mr. PANETTA. And I would go so far as say is that you have a number of people working in agriculture and I think the estimates that I have seen 70 percent working in ag on those farms, unfortu-

nately, do not have proper status. Yet they are continuing to contribute to our agricultural economy, correct?

Mr. BIER. Yeah, absolutely. If you don't have the manpower to do specialty crops in this country, you are going to import all those high-profit crops from abroad, and that is the nature of a free market economy. That is the nature of global competition. Our farmers want to compete internationally and be exporting food around the world and compete in those high-margin crops.

Mr. PANETTA. I want to thank you. I want to thank the witnesses. Thank you, Mr. Chairman. I look forward to working on not just highlighting the issues. Let's make sure we have the political will to come up with solutions.

Chairman ARRINGTON. Well, I appreciate——

Mr. PANETTA. Thank you.

Chairman ARRINGTON [continuing]. The gentleman from California's sincere efforts and his leadership to fix some of the broken parts of the illegal, of the immigration rather, system in our country around agriculture. He is in fact a leader on that and I appreciate it. Now I yield five minutes or so to my friend from the Keystone State, Mr. Lloyd Smucker.

Mr. SMUCKER. Mr. Bier, do you think we should get operational control of the border? We should have operational control?

Mr. BIER. Absolutely.

Mr. SMUCKER. Do you think we should stop the flow of illegal immigration?

Mr. BIER. Yes.

Mr. SMUCKER. Do you think we should welcome productive individuals who want to be productive members of our society to come here?

Mr. BIER. Yes.

Mr. SMUCKER. And they should be properly vetted.

Mr. BIER. Yes.

Mr. SMUCKER. So you think we should increase our legal immigration?

Mr. BIER. Yes.

Mr. SMUCKER. Ms. Kirchner, do you think we should get operational control of the border?

Ms. KIRCHNER. Yes, sir.

Mr. SMUCKER. We should stop the flow of illegal immigrants?

Ms. KIRCHNER. Yes.

Mr. SMUCKER. Do you think that we should properly vet legal immigrants and we should continue to do so?

Ms. KIRCHNER. Absolutely.

Mr. SMUCKER. Do you think that we need individuals who want to come here, who want to be productive members of society?

Ms. KIRCHNER. Absolutely. We should have skilled immigration. Yes, sir.

Mr. SMUCKER. So, we really aren't far apart, and I don't think Democrats and Republicans are all that far apart here either.

I do think, Ms. Kirchner, one of the pieces that you missed, and not to argue with you, but that you missed slightly, is we do need workers, and workers who come here and perform jobs that are needed, contribute to our economy. They will buy food, they will buy clothing. They will, in general, benefit the United States by

growing our economy, a stronger growth in the economy that benefits by those workers paying into the Social Security system, paying into Medicare, generating additional revenue and additional taxes.

It is unfortunate today that that is happening with illegal immigrants. It should not be happening because at the same time, we then are allowing the flow of drugs, we are allowing the flow of criminals into the country, and that is, you know, I am from Lancaster County, 2,000 miles from the border. We have hundreds of fentanyl deaths in our region. It is a real problem that we have. Every single city, every single area of the country really has been affected by the Biden Administration's policy on the border.

So, I agree with almost everything that you are saying.

Ms. KIRCHNER. Mm-hmm.

Mr. SMUCKER. Mr. Bier, I agree with almost everything that you are saying as well. We have got to fix it, and the Biden Administration has absolutely failed the American people with what they are allowing to happen on the border, but I think it is really, really important that we not continue to conflate the two issues.

We need legal immigrants, we need individuals to take jobs, and I think it is actually the opposite of what you said, Ms. Kirchner. I don't think they are taking American jobs. I think what happens if we don't have an adequate workforce, companies that can choose to do so will go to other countries, will go to other areas to build their new factory. So, I think immigrant workers are actually a net gain for American workers as well, and I just, one small thing where you and I disagree.

Mr. Bier, I think you are passionate in what you are saying. I think you could be more convincing if you are more open to an understanding of other viewpoints and not as confrontational. You know, I think it is really important that we have these real conversations. We address the real concerns that the American people have about the border and recognizing that, recognizing the absolute abject failure of the Biden Administration's border policy is absolutely important, particularly for those of us, the witnesses here from Texas. You are seeing it probably more than other communities, but we are seeing it in my community as well.

And so, I agree completely with Representative Panetta. We have to fix this. We can do it. This panel isn't far apart. Members of Congress aren't far apart on this issue.

I have a bill that would actually create an entirely new visa program for those year-round workers, for farm workers, but then also construction, health care. There are a lot of people, there are a lot of places where we need millions of workers.

This also then gets muddied. We also need to increase the workforce participation rate of Americans. That is another way we resolve our worker issue, but we can't do it without immigrants, and in fact, I don't think we can solve our debt problem unless we are really growing this economy, and I think immigration, legal immigration, where we are properly vetting immigrants as we always have done, is a really important part of that.

So, sorry I didn't get to any more questions, but thank you, Mr. Chair, and I will yield back.

Chairman ARRINGTON. I appreciate your line of thinking and comments and associate myself with them, and now we are going

to continue on the Republican side with Mr. Bob Good from Virginia for five minutes.

Mr. GOOD. Thank you Mr. Chairman, and I appreciate all of our witnesses who are here today. I have a question. I would like to try to get four succinct answers as I go down the row, starting with Ms. Kirchner. What percentage, in your opinion, estimation, your research, what percentage or what number of the world's non-U.S. population would come to America if they could? In other words, we got roughly 350 million Americans, some seven billion-plus people who don't live in the United States. So, if they could, what percentage of the world's population or what number, would you just kind of a guesstimate based on, that would come here if they could?

Ms. KIRCHNER. Yes, sir. Fortunately, I didn't know it would be a pop quiz. But I know Gallup has done——

Mr. GOOD. You didn't know there was going to be math in this.

Ms. KIRCHNER. No, no, no. I do know Gallup has done some surveys and I know it is, I think it is probably a third.

Mr. GOOD. So, you are saying somewhere in the two billion range. I am just assigning a number to a third, maybe two to three billion, something like that.

Ms. KIRCHNER. That would be my guess. You couldn't hold me to it.

Mr. GOOD. Okay. Mr. Blair, if you had to guesstimate a number, if they could, the world's population that would come to the United States if they could?

Mr. BLAIR. Well, the U.S. is the greatest country in the world, so I would probably put it maybe 50 percent or more.

Mr. GOOD. Okay, you are saying three, four billion. Mr. Smith?

Mr. SMITH. I make it a close 70 percent.

Mr. GOOD. Close to 70 percent. So you are saying in the five billion type range, and then down at the end, Mr. Bier?

Mr. BIER. Oh, it would certainly be over 100 billion, but we can focus on the people who have already——

Mr. GOOD. Over 100 billion?

Mr. BIER [continuing]. Gotten the process.

Mr. GOOD. We don't have 100—you meant——

Mr. BIER. Sorry, sorry, 100 million. Wow.

Mr. GOOD. You are saying only 100 million?

Mr. BIER. We could—yeah.

Mr. GOOD. You are saying only 100 million.

Mr. BIER. Well, that is about what Gallup estimates.

Mr. GOOD. Only 100 million.

Mr. BIER. Yeah.

Mr. GOOD. What is the population of Africa? What is the population of South America? What is the population of Asia? And you are thinking only 100 million of them. There is, what, five billion between those just roughly making it up. So you are saying in the range of two percent would come here? Two percent would come here if they could?

Mr. BIER. I mean, wages equalize over time, so look at what—we have open borders with Puerto Rico——

Mr. GOOD. Okay. Thank you. Thank you. I think you know——

Mr. BIER. We have——

Mr. GOOD [continuing]. Where I am going. Thank you. I reclaim my time. Thank you.

Mr. BIER. Okay.

Mr. GOOD. All right. So, how many should we let come to America? I think that is a fundamental question. How many should we let come to America? Meaning legal, illegal, someone to mix the two together, which is offensive. I wish Mr. McClintock was still here. How many should we let come?

Ms. KIRCHNER. Yes, sir, we——

Mr. GOOD. What would be a good number?

Ms. KIRCHNER. We believe that current immigration rates are about as much as we can sustain as a nation. We would, however, advocate that those immigrants be skilled. We think, for the national interest, it would benefit both our economy——

Mr. GOOD. Respectfully, I am going to pause you, because I have only got two minutes.

Ms. KIRCHNER. Yes, sir.

Mr. GOOD. And I am going somewhere. I apologize, Ms. Kirchner, for that.

Ms. KIRCHNER. No, that's fine.

Mr. GOOD. I think the—okay. What percentage would come if they could? How many should we let come? And what number would make us no longer America? And is it worth preserving what makes us distinctly, uniquely America? Is that worth preserving?

The fundamental question relative to the illegal alien invasion, or for those who support the illegal alien invasion, first of all, as others have said, there is no such thing as illegal immigration. Immigration is a legal, lawful process. For that matter, legal immigrants are Americans, aren't they? Legal immigrants are Americans, of course. They wanted to be Americans. They earned their citizenship. They pledged their allegiance. They learned our language. At least everyone that I have interacted with at the naturalization ceremonies they have the privilege of going to has learned our language. They have had the means and the ability to contribute to our economy and our society and make us stronger, make us better.

In fact, this Friday, two days from now, I look forward to welcoming another group among the million or so that we legally allow into this country every year, legally. I am going to welcome them at Patrick Henry's Red Hill home in my district. I have the most historic district in the country, I would submit.

So the fundamental question for those who support the illegal alien invasion is, does everyone around the world have the right to come to America? Or does America have the right to decide who gets to come to America? How about those two questions? Does everyone around the world have the right to come to America? Or does America get to decide who has the right to be in America? Ms. Kirchner.

Ms. KIRCHNER. Americans should be able to decide the future of their country. Thank you, sir.

Mr. GOOD. Mr. Blair?

Mr. BLAIR. Americans should decide.

Mr. GOOD. Mr. Smith?

Mr. SMITH. Same.

Mr. GOOD. Mr. Bier?

Mr. BIER. America should decide, but there should be a presumption in favor of liberty.

Mr. GOOD. And that is the question that does indeed make us very far apart from what Lloyd said. Because what many on the other side believe, and I would submit Mr. Bier believes this if he was being honest with us, that they believe that—because of the statements that he said in his opening remarks, they believe they have the right to be here, and then the Ranking Member talked about the triangle countries coming here. You know, we cannot—and he said, the problem is we got to go fix those triangle countries so they don't want to come here anymore from Guatemala, Honduras, and El Salvador. The only way we can do that is to let lawlessness reign, destroy our economy, defund and undermine our police, you know, destroy our institutions, so that we become as bad as some of these countries around the world, and then the journey and the cost of the journey, the difficulty is no longer worth it. I submit that is Democrat policies carried through.

Thank you, Mr. Chairman. I submit—I yield back.

Chairman ARRINGTON. I thank the gentleman for——

Mr. GOOD. I am sorry. For the record, sir, if I may——

Chairman ARRINGTON. Yes, sir.

Mr. GOOD. I ask unanimous consent to submit an article of support from the Center Square regarding the 60 counties in Texas that have declared an emergency and the 50 counties that have declared an invasion in light of the crisis at our southwest border.

Chairman ARRINGTON. Without objection, so ordered.

[The information follows:]

https://www.thecentersquare.com/texas/article_81d86a18-e246-11ee-a151-1fe36912b28a.html

Texas counties changing national conversation on border crisis as invasion

By Bethany Blankley | The Center Square contributor



Galveston County Sheriff's Office Border Security Response Team deputies apprehend illegal border crossers in Kinney County, Texas.

Galveston County Sheriff's Office

(The Center Square) – Three years ago this April, a small border county took a stand to defend its few thousand residents after they were inundated by border-related crime.

On April 21, 2021, Kinney County **was the first** to issue a disaster declaration, citing the border crisis. Atascosa, Goliad and La Salle counties quickly followed.

Texas Gov. Greg Abbott then issued a disaster declaration on May 31, 2021, to provide counties with support. On March 6, 2021, he launched Texas' border security mission, Operation Lone Star.

At a June 11, 2021, meeting in Del Rio, Texas, when Abbott first **announced** he was building Texas' border wall, Kinney County Attorney Brent Smith first suggested that Abbott use his constitutional authority to declare an invasion, citing Article 1, Section 10, Clause 3 of the U.S. Constitution.

At the time, no one was using the word invasion or even discussing it.

Over the next year, residents and lawmakers called on Texas Attorney General Ken Paxton to issue a legal opinion on "invasion." The only state attorney general to do so was former Arizona Attorney General Mark Brnovich in February 2022. Brnovich cited former Supreme Court Justice Antonin Scalia to make the case for states' right to self-defense. Nearly two years later, he **made the same case** before Congress. The Center for Renewing America also **published** a paper explaining the federal government's constitutional requirement to protect states against invasion.

During an election year in 2022, calls for Paxton and Abbott to issue an invasion opinion and formal invasion declaration, respectively, went unanswered. On July 5, 2022, Kinney, Goliad and Terrell counties were the first counties in history to declare an invasion, citing the U.S. and Texas constitutions. By August 2022, Paxton's office was **still saying** it wouldn't issue an opinion on invasion citing federal code.

After the November 2022 election, a former active-duty Navy JAG and national security law expert **renewed** the call for Texas to declare an invasion. Days later, Abbott **sent a letter** to county judges pointing to an executive order he issued in June 2022. In it, he cited the Texas Disaster Act of 1975 and U.S. Constitution as his authority to direct the Texas National Guard and Texas Department of Public Safety to apprehend illegal foreign nationals "who cross the border between ports of entry or commit other violations of federal law, and to return [them] to the border at a port of entry."

The Texas legislature, which has not passed an invasion resolution, has allocated over $11.6 billion for border security efforts over four years. Last year, it passed SB 4, to implement provisions of Abbott's order, which he signed into law. It was set to go into effect this month but was challenged in court and is currently before the U.S. Supreme Court.

Over the past three years, Abbott has sent multiple letters to President Joe Biden, held press conferences with Republican governors, and most recently, 25 Republican have pledged to support Texas' border security operations. This January, Abbott issued a statement on Texas' constitutional right to self-defense and **sent a letter** to Biden, saying the president had broken his compact with the states.

Florida Gov. Ron DeSantis, who was among the first to send troops, law enforcement and other personnel to Texas, also **argued** no one would have ratified the U.S. Constitution if protection for states was excluded.

In an op-ed published by the New York Post last month, Abbott again made the argument for Texas' constitutional right to self-defense, incorporating similar arguments Brnovich first made in 2022.

Nearly three years after Smith first sounded the alarm, 60 Texas counties have issued disaster declarations and 55 have passed **invasion resolutions**, with some doing both.



Goliad County Sheriff Roy Boyd (from left), Goliad County Judge Mike Bennett, Kinney County Attorney Brent Smith have declared an invasion at the southern border. They say they are fighting to defend Texas generations after their ancestors did the same.
Bethany Blankley for The Center Square

While many claim the issue is about illegal immigration, military experts **have warned** what's occurring is cartel-driven migrant warfare. Smith and others agree, arguing what's at stake is the safety and security of a state's sovereign border. Transnational criminal organizations gained operational control of the border under Biden, creating imminent danger to Americans, they argue. When the federal government violates or fails to enforce federal law, the U.S. Constitution provides a guarantee to states.

Being born and raised in a small border community, Smith and his neighbors have witnessed waves of illegal border crosser activity over the years. But they argue the relentless crime was unleashed after Biden halted enforcement of federal immigration laws on his first day in office. Since then, an estimated **more than 11 million people** have illegally entered the U.S., including two million who are known to have evaded capture. Texas, which has borne the brunt of illegal border crossings, saw a record 1.9 million in fiscal 2023 alone, The Center Square **exclusively reported**.

Smith, who was first elected county attorney in 2020, told The Center Square, "I had a front row seat to the destruction of the safety, security, and property of many whom I consider family.

Doing nothing was never an option for me. As Texans, we have a sacred duty to preserve those liberties that we have inherited from others who paid the ultimate price.

"From day one, it was very clear that the border crisis was intentional and would require a constitutional remedy. The inalienable right of self-preservation is the cornerstone to our Constitution and underlies everything we hold sacred as Americans. The State's self-defense clause within Article 1, §10, Clause 3 derives from the inalienable right of self-preservation, which empowers each sovereign state to act in preserving the lives, liberty, and property of the people. This right is inalienable to the state of Texas, meaning it cannot be adjudicated away or prevented by any court ruling."

While many may try to make the issue about immigration, human rights, racism or even secession, Smith argues, the issue is the constitutional sovereign authority of states to protect their citizens.

Mr. GOOD. Thank you, sir. I yield back.

Chairman ARRINGTON. I now yield five minutes to General Jack Bergman from Michigan.

Mr. BERGMAN. Thank you, Mr. Chairman, and I ask unanimous consent to enter into the record an April 2024 article from Gallup titled, "Immigration named top U.S. problem for third straight month."

Chairman ARRINGTON. Without objection, so ordered.

[The information follows:]

GALLUP®

APRIL 30, 2024

Immigration Named Top U.S. Problem for Third Straight Month

Immigration has been the most politically polarizing issue mentioned in past 24 years

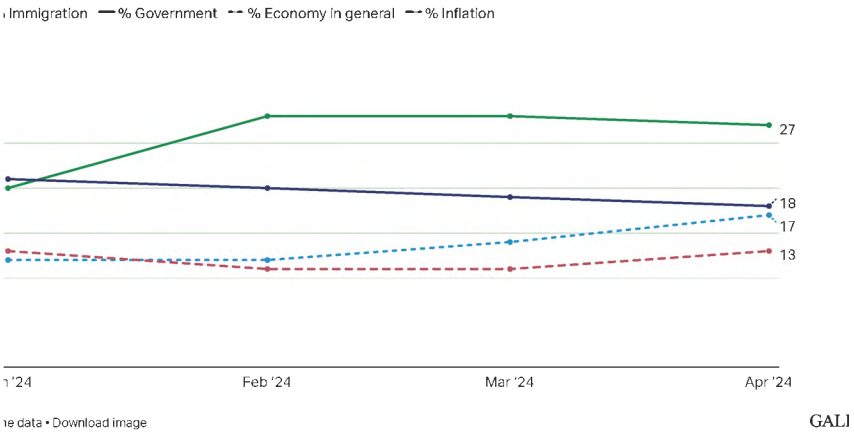
BY **MEGAN BRENAN**



WASHINGTON, D.C. -- A steady 27% of Americans say the most important problem facing the U.S. is immigration, topping Gallup's open-ended trend for the third consecutive month, the longest stretch for this particular issue in the past 24 years.

nigration Remains Most Important U.S. Problem Among Americans

ıt do you think is the most important problem facing this country today? [OPEN-ENDED]



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The latest results are based on an April 1-22 Gallup survey, as elevated numbers of migrants continued to seek entry at the U.S. southern border. Immigration tied with the government as the top issue in December 2023, when the number of migrant encounters at the southern border set a record for a single month. In February, as a bipartisan measure to address the issue failed in the U.S. Senate, immigration overtook the government as the nation's most important problem and has remained there since.

In addition to these recent instances, immigration has topped Gallup's most important problem list four times since 2000 (either alone or tied with another issue), including at several points in 2014, 2018 and 2019. However, 2024 is the first time that immigration has remained the top issue for multiple successive months.

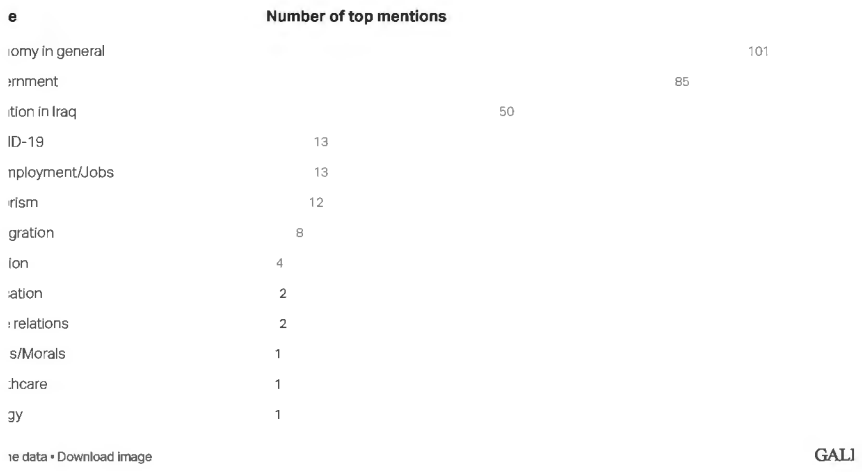
Other issues -- including the economy in general, the government, the Iraq War, inflation, COVID-19, unemployment and terrorism -- have held the top spot more often than immigration since Gallup began updating the most important problem question monthly in March 2001. Except for

inflation and unemployment, all of the other issues have had longer consecutive runs as the top issue than immigration currently has.

The economy has been the top problem far more often than any other issue (101 times over the past 24 years), while the government has held the top spot 85 times and the Iraq War registered 50 top appearances.

ues Named Most Often as the Most Important U.S. Problem, 2001-2024

ıber of times each issue has been named as the most important problem facing the U.S., either alone or tied with ther issue



ıe data • Download image

Immigration Is Most Politically Polarizing Issue on Most Important Problem List

Republicans are far more likely than Democrats and independents to name immigration as the most important issue. In the latest poll, 48% of Republicans, compared with 8% of Democrats, mention immigration. Independents fall roughly in the middle, at 25%.

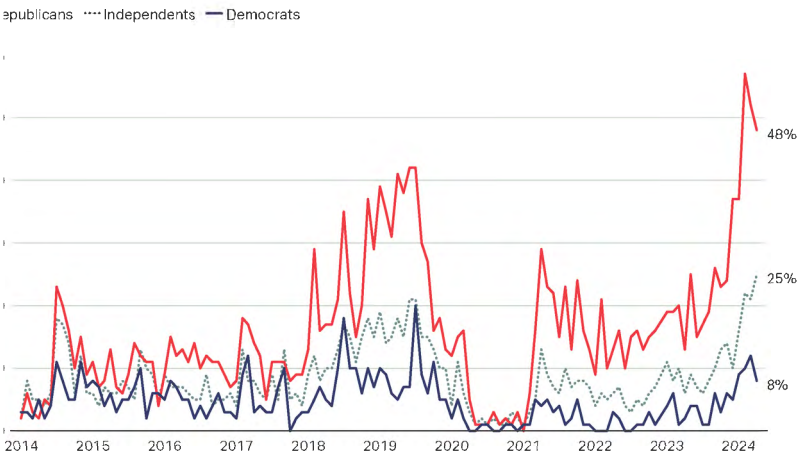
Republicans' mention of the issue has come down from February, when a record-high 57% named it. Fewer Democrats now than in 2019 (when as many as 20% mentioned it) say immigration is the top problem. Meanwhile, independents' latest mention of immigration is at a new high, although statistically similar readings were recorded in 2019 and in recent months.

The most important problem question is open-ended, allowing respondents to name up to three issues. Variation in the percentage of total mentions each month, generally ranging between 108% and 168% in the trend since 2000, creates additional possible error in how historical percentages (overall and by subgroup) should be interpreted.

'tisan Shift in Viewing Immigration as the Key Issue, 2014-2024

ıt do you think is the most important problem facing this country today?

lentioning immigration



ences in the number of total mentions across polls complicate comparing trend results for the percentage mentioning a single issue.

ıe data • Download image

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Historically, Republicans have been much more likely than Democrats and independents to mention immigration as the biggest problem facing the U.S. The current 40-percentage-point gap in Republicans' and Democrats' mentions of immigration is among the largest party differences on record for this measure. It is identical to last month's gap and second to February's 47-point partisan difference on the same issue.

Examining Gallup's most important problem trends by party shows that immigration is currently a uniquely polarizing issue. The gaps between Republicans and Democrats mentioning it this year are greater than for any other issue in the past 25 years.

The next most polarizing issue was the COVID-19 pandemic, which was named by far more Democrats (43%) than Republicans (8%) in February 2021, resulting in a 35-point gap. The Iraq War, the government and unemployment were also named by more Democrats than Republicans in past surveys, showing 20- to 24-point gaps. Terrorism was an especially Republican-centric concern, with a 20-point gap in September 2004.

'gest Partisan Gaps in Most Important Problem Issues, 1999-2024

e	Republicans %	Independents %	Democrats %	Rep-Dem gap (pct. pts.)	Dat
gration	57	22	10		Feb '
gration	52	21	12		Mar '
gration	48	25	8		Apr '
ID-19	8	24	43		Feb '
ition in Iraq	12	24	36		Sep
ernment	12	25	34	−22	Oct '
nployment/Jobs	18	24	38	−20	Jul '
rism	29	17	9		Sep

ıe data • Download image

GALL

Other problems have been cited by more Americans overall, although there was more agreement among partisans on their importance. For example, during the Great Recession, Democrats' and Republicans' mentions of the economy were similarly elevated. Likewise, after the 9/11 terrorist attacks, mentions of terrorism increased among both parties.

Bottom Line

For the third month in a row, immigration is the problem Americans name more than any other as the most important facing the U.S. While immigration has not ranked as the top problem often in Gallup's monthly trend, it stands alone as the most politically polarizing issue in the past 25 years of Gallup's measurement.

The record surge of migrants at the southern U.S. border in December brought even more focus on the issue -- and while attempted crossings have eased slightly since then, they are expected to increase as spring continues. President Joe Biden's approval rating for his handling of immigration has been persistently poor. With the presidential election about six months away and immigration top of mind, the issue remains a significant vulnerability for Biden as he seeks reelection.

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SURVEY METHODS

RELEASE DATE: April 30, 2024
SOURCE: Gallup https://news.gallup.com/poll/644570/immigration-named-top-problem-third-straight-month.aspx
CONTACT: Gallup World Headquarters, 901 F Street, Washington, D.C., 20001, U.S.A
+1 202.715.3030

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Mr. BERGMAN. As Gallup findings confirm, Americans continue to be deeply troubled by President Biden's refusal to secure the southern border or enforce immigration law. This should not come as a surprise to anyone in this room. We got issues, especially you, Mr. Blair. You got a lot of years in an Army uniform. I got a few years in a Marine uniform. So I am going to kind of talk to you, especially with your last, you know, 10-plus years here with the Border Patrol. We can talk soldier to Marine, but I also serve on Armed Services, so I am a little bit familiar and in a former life wearing the hat of Commander of Marine Forces North, which we dealt with the border, if you will. Some of my information may be a little dated, but not much. Okay.

Mr. Blair, in your written testimony submitted to the Committee, you note that the level of illegal mass immigration, U.S., is currently—the level is currently seen as a deliberate—this is a quote, "a deliberate and calculated strategy of weaponizing migration to undermine the sovereignty and security of the United States and its states." Could you elaborate just a little bit? Don't take a whole lot, but just give me a couple of—you know, elaborate on that a little bit.

Mr. BLAIR. Yes, sir. If you look at the great work done by Kelly Greenhill and also Joseph Humire from The Heritage Foundation, they have done a lot of case studies in regards to this. Weaponized mass migration has happened over 80 times since the 1951 Refugee Convention. It is when a state or nonstate actor uses human beings as a weapon to eradicate someone's sovereignty.

So in my report, I stated Lukashenko was doing that against the countries of Latvia, Lithuania, and Poland, where he forced foreign nationals to other people's borders in order to decrease the security of the environment so that they could decrease the sovereignty of that nation. By following that same playbook, the current administration is inviting massive amounts of foreign nationals to our southern border in order to decrease or eradicate our sovereignty, force Border Patrol agents, like what I was doing, and other law enforcement agencies and also local law enforcement to address that fact that mass migration, which decreases the security of the environment and allows the Mexican cartels to completely operationally control both sides, and so that is really what weaponized mass migration is. It is a tool to completely eradicate sovereignty.

Mr. BERGMAN. So I am going to put my words on this. They are organized on many different levels. So having said that, since we know we have, as the United States of America, we have foreign adversaries, Russia, China, Iran. Do you think they are looking at the cost of illegal immigration that it imposes on our taxpayers and that this is part of the calculations of the Iranians, the Chinese, the Russians? I mean, again, if it is organized, somebody is doing the math on how much money we are pouring into this. Do you think that is a calculation that they use?

Mr. BLAIR. Yes, sir, 100 percent. The Chinese use the unrestricted warfare, so it is every asymmetric means to eradicate our sovereignty and security and financial warfare is one of those means.

Mr. BERGMAN. Okay, and kind of how plausible is it that foreign nationals are illegally coming to the U.S. at the direction of adver-

sarial governments to engage in espionage or to potentially be in sleeper cells?

Mr. BLAIR. Oh, it happens every single day. Look what has happened the first few days in May. We had more Chinese illegal aliens coming through southern California than we did all of Fiscal Year 2021, and so when you look at that issue and you see that our vetting process—as Border Patrol agents, we typically don't vet, and you look at these single military age males and you look at the difference between those that are actually running from, whether that is communism or running from situations where their life is in danger compared to the ones that we are actually apprehending, you can see in direct confidence that they are here for nefarious means.

Mr. BERGMAN. Okay, and I see my time is about to run out, but would you think that potentially the cartels are operating as brokers and playing all sides against the middle to create the environment that because of their use of drones, because of their use of different submersibles, because of all the things they use, that there are probably things that we don't see that are tied together for the benefit of those against us?

Mr. BLAIR. Yes, sir. The Mexican cartels have completely controlled the operational border—I mean, sorry, the southern border, and have created a Silk Road for the CCP to enter every single one of our communities.

Mr. BERGMAN. Well, in Marine terms, I am guessing probably the Army says the same thing, we got snipers in the wire.

Mr. BLAIR. Yes, sir.

Mr. BERGMAN. On the inside and the weapons are pointed at us, and we need to not continue to turn a blind eye to that fact.

And I will just say I will yield back. I guess I am a little bit over, but I would suggest that as a personal trait for anyone, arrogance creates a blind spot in all of us. So we, in our dealings with ourselves and others, should look to eliminate those blind spots.

And with that, Mr. Chairman, I yield back.

Chairman ARRINGTON. I thank the gentleman from Michigan, and yield now five minutes to the gentlelady from Michigan, Lisa McClain.

Ms. MCCLAIN. I see a trend going here, Mr. Chairman. Thank you. I think it is interesting that you have all the Republicans asking questions right now. So I appreciate this hearing, Mr. Chairman. Clearly, we care, and I know you do.

I know we have talked about the numbers, but I think it bears repeating. The Federal Government spent over $66 billion on illegal immigrants in 2023, according to the Federation for American Immigration. Does anyone here want to guess how much we have spent on homeless veterans in 2023? Guess? Well, let's just start higher, lower, the same? Anybody want to guess?

Mr. SMITH. Fractional.

Ms. MCCLAIN. Fractional. Thank you. $3 billion. $66 billion on illegals, $3 billion on people who have laid down their lives for this country. Can anyone explain up there why that makes sense?

Mr. BIER. Well, one is including all sorts of benefits and one is just looking at a very, very narrow slice.

Ms. MCCLAIN. No, no, I am using the same numbers.

Mr. BIER. So if you look at——
Ms. MCCLAIN. Sir, you are——
Mr. BIER. If you did a direct comparison——
Ms. MCCLAIN. I am using apples to apples.
Mr. BIER [continuing]. It would be a very different calculation.
Ms. MCCLAIN. I am using applies to apples. So since you know, why don't you share with me?
Mr. BIER. We don't track U.S. vet——
Ms. MCCLAIN. You don't know. You don't know.
Mr. BIER. We don't track U.S. veterans in the Census, so that would be very helpful if we did, then I would be able to give you a very good——
Ms. MCCLAIN. But do you know the answer? Because I do. I do. So I appreciate your opinion of which you have no facts on, but let me continue and let me educate you some more.

The Federal Government, breaking that $66 billion down, let's look at what we fund. So you might want to get a pencil and paper and take some notes because I will help you do your job: $5.8 billion in SNAP, $10 billion in Medicare, $8.2 billion in uncompensated hospital expenditures, $3 billion for primary and secondary education for illegal immigrants, and how many illegal immigrants are given taxpayer-funded housing compared to the number of homeless veterans that are sleeping on the street?

You don't know because you don't want to know. You don't want to see the numbers. Well, I do, and I can share with you the American people do because I will share with you, the people in my district, in Michigan of the 9th District, we care about our homeless veterans. We care about our veterans, and yes, we care about them a little bit more than we care about people who have broken the law to get here illegally.

So, I actually have some suggestions and maybe some answers on how to fix it. Instead of $66 billion, here are a couple things we could spend. The White House has requested $13 million for the National Call Center for Homeless Veterans. I am going to say it again, $13 million with an "M." Right? Maybe we could find that out of that $66 billion, right, different between million and billion, big difference, we could funnel some more of that $66 billion to our homeless veterans. Anyone opposed to that? Why aren't we doing it? Why aren't we doing it? Anybody got an idea? Anybody got an idea why we are not, God bless you, why we are not doing it? I will tell you why we are not doing it. Because the Biden Administration does not want to do it. Am I correct? Am I incorrect on that? I didn't think so.

This year's budget request from the White House asks for $17.2 billion in mental health spending for veterans. That $10 billion we lose to Medicare spending would surely benefit the struggle with the mental health issues. So why don't we do this? America is a very charitable country. Why don't we take care of our own first? Anyone see a problem with that? Why don't we? I will tell you why we don't. Because the Biden Administration doesn't want to do that.

It is maddening to me. The White House budget requested for caregiver support programs, not $2.9 billion. Maybe instead of $3 billion for educating illegal immigrants, we can give more funding

to caregiver support programs. Right? We are all talking about—both sides of the aisle, which ironically doesn't even want to participate in this hearing, sadly, but not unexpected, we all talk about caregiving as a problem. Right? I hear that on both sides of the aisle. What would happen if we took that $3 billion and gave it to caregivers that live in the United States? Anyone have a problem with that? Why don't we do it? Anybody? The Biden Administration doesn't want to do it.

And you play games with your facts and you play this shell game. Well, I am going to share with you the American people are not fooled and they are frustrated and fed up with it. Let's just be honest about where this money is going so we possibly can redirect it to the correct place. Let's start with our veterans. Thank you, and with that, Mr. Chairman, I yield back.

Chairman ARRINGTON. I thank the gentlelady from Michigan, and now yield five minutes to my friend from Utah, Mr. Blake Moore.

Mr. MOORE. Thank you, Chairman. This is—I have had the last two and a half, three years, numerous town halls. This is the topic that has been in every single one. I am from Utah. I don't—you know, we are not on the southern border. We are recognized recently again as the top state in the nation from U.S. News. We have all the right economic indicators, all this great stuff going on, and the massive concern of what is going on at the border and what could potentially be the problem with what has happened over the last three years in ten years from now. Well, what implications that this has on the next decade. So immediate, acute issues and what ultimately plays out is terrifying to my constituents.

To me, as I see some of the simple things that you saw from the previous administration, I heard Mike Pence, Vice President Pence, talk about the negotiations with Mexico to come up with the Remain in Mexico plan. I wish we could create a legislative fix to it. I would be all for it. Make it permanent, make it into law, figure out the catch and release issues, parole authority all across the board.

President Biden came to office and he just said, you know what? I don't like President Trump. What Mike Pence—what President Trump and Mike Pence did, I am going to just take it away. There were positive things happening and we are just going to—we are going to reverse it all. That is what he did. Everybody knows it. Every single constituent of mine understands that there was frustration there, and I wish we could fix it legislatively, too. I think there is a solid group of Republicans and Democrats that recognize we have to have strong border security and we have to fix our immigration antiquated process. We get it, but for 30 years, we haven't been able to fix it. President Biden can at least do something right now, and he has been unwilling to do it.

Mr. Blair, Ammon, a couple questions. So, I have got numbers here. Cartels have seen, according to Homeland Security Investigations, cartels have seen their human trafficking and smuggling profits soar from $500 million in 2019 to well over $13 billion in 2022. Now, it is going to be hard for us to accurately track the amount of money that the cartels are making. I don't think they

properly report on their W–2s what they are profiting from this, but would you say that is directionally correct from your understanding?

Mr. BLAIR. That is directionally correct.

Mr. MOORE. We are not talking a small difference from just—that is one factor that is different from 2019. I will give it two. There are two factors that are different from 2019 to 2022. One of them was there was a pandemic that caused some disruption and the other one was that President Biden came in and his administration reversed every single border provision that was going on, and he has allowed for three and a half years of this to continue on. This is enabling cartels, enemies of our country, bringing in fentanyl and creating—running the show down on the southern border.

There is an intersection here with the Department of Homeland Security and the intelligence community. Do you think there are effective ways for DHS agents to work with the intelligence community on tracking cartel whereabouts in border towns, intercepting plans and disrupting operations? Can you just speak to that and maybe the current state between DHS and the intelligence community and what we need to be doing better?

Mr. BLAIR. Yeah. First and foremost, they need to be designated as foreign terrorist organizations in order to get the intelligence apparatus to completely understand what Mexican cartels are actually doing. Also, you also need to change the Uniform Crime Report or the National Incident-Based Reporting System. As it stands right now, a lot of cartel-related activity is actually not put into that system, so we are actually running blind right now.

So, whether that is going to be Border Patrol on the ground, HSI, Department of—anyone in the Department of Justice, all of us are operating in silos. There is not a lot of shared information. There is some, and I do give credit to those that are sharing, whether that is at the individual tactical level and maybe sometimes at the operational level, but in terms of trying to understand the entire threat as it stands now with our current system, that is almost impossible.

Mr. MOORE. I shudder whenever I hear the concept of not sharing intelligence and properly communicating with each other. We saw from the 9–11 Commission that we can do better in the IC. So I encourage you, and I want to be a voice back here to make sure I can do whatever we can to get out ahead of that issue and realize that we are on the same team and working together.

Existing funding, let's talk at least existing funding and where we need to put most of that in order to divert migrants to only the ports of entry, help end the reign of the cartels, and secure the sovereignty. Anything on the additional existing funding that we can be doing a better job of that right now?

Mr. BLAIR. Yes, sir. Critical infrastructure between the ports of entry. So adhering to the Secure Fence Act of 2006, that would deny almost all illegal entries, which would stop one of the commodities, and I hate to reference foreign nationals or human beings as commodities, but to the Mexican cartels, that is what they are.

Mr. MOORE. That is what they are to them.

Mr. BLAIR. And so in order to deny that, we would need some sort of apparatus between the ports of entry in order to actually understand the domain awareness of it and also be able to stop it, because as it stands now, as a Border Patrol agent, you are going down there, a lot of times it is like it is back in 1924. I am having to cut sign on roads to understand what is actually who, where, when, why, or how is actually coming across because we don't even have the technology to understand that.

Mr. MOORE. I was only able to ask questions to you, Mr. Blair, but thank you to all of our witnesses for their tireless work on this. We have got to come up with solutions and fix this issue. Thank you. I yield back.

Chairman ARRINGTON. I thank the gentleman from Utah. I now yield five minutes to the gentlelady from Vermont, Ms. Balint.

Ms. BALINT. Thank you, Mr. Chair. Thank you to all the witnesses for being here today. When we have people come and share their time with us, it helps us to do our jobs better. So I appreciate it.

Mr. Bier, I said to you earlier, I was very pleased to meet you this morning because I have been following your writing for some time and there are so many things that you have written that absolutely resonate and make sense for me given our situation in Vermont with our workforce crisis, and so you said America has never needed immigration like it does now. I would agree based on what I see across industries in Vermont. You have also said that without immigration, the U.S. population will decline by the 2030s. We have labor force decline. The jobs that are going unfilled are not going to be filled without immigrants. The numbers don't work out. It doesn't pencil out. Right? So as the U.S. prime age employment rate is at near record high and we still have thousands and thousands of jobs that are going left unfilled, even in my small state of Vermont.

And the other piece that we talk about a lot in here is Social Security and making sure we shore up Social Security. So, immigrants we know will work and they will pay into the system and that can boost Social Security revenues, which we desperately need, and so thank you so much for being here today.

The data seems to indicate that the nation's public debt is set to increase to $54 trillion by 2034, and I am wondering, how can immigration help to offset this debt that we see coming?

Mr. BIER. Well, look, we need obviously reform to our spending program. So, you know, I don't want to say that immigration is going to somehow solve all of our problems.

Ms. BALINT. Absolutely, multi-problems.

Mr. BIER. At the margin, immigration helps, and, you know, we have the Congressional Budget Office saying that we are going to reduce spending or reduce the deficit by a trillion dollars over the next decade just from that, and if you look at long term, the Social Security trustees report finds massive gains from immigration. When you talk about Social Security, you can measure that in workers. They tell us how many workers we need in order to fund retirees.

Ms. BALINT. Right.

Mr. BIER. And by the mid-2030s, they are going to be about 35 million workers short of what they need to keep Social Security revenues equal to expenses. There is a huge need in the United States, and it is measured in tens of millions, not thousands.

Ms. BALINT. Thank you. You know, in my home state, as I mentioned, we have a terrible workforce crisis right now, and it is particularly hard on one of our core industries, the dairy industry. You know, two-thirds of New England's milk production is supported by migrant workers, immigrants who come to work, and it is not just the ag industry in Vermont, specifically the milk industry. It is ag industry across the country, right, we know this. Can you tell us what affects strict immigration policies? I am talking about legal immigration, like the number of people coming in, the number of people able to work. How does that impact all of us, not just in terms of workforce, but in our pocketbooks, in terms of the prices that we are paying? Like, how does it fit into the general contours of the economy?

Mr. BIER. Right. So we are in a global economy. We can import milk from abroad. We have to compete with farmers around the world who can manufacture this stuff cheaper because they have lower costs of labor in those countries. Of course, we are more productive in this country, and our farms are more efficient in that respect, but they still need the workers, they still need the labor, and if you look at what we are doing with the H–2A visa program, we exclude all year-round agriculture from that program. So there is zero visas under that program for year-round dairies, where you have a need. The cows have to be milked——

Ms. BALINT. Yes.

Mr. BIER [continuing]. All year round.

Ms. BALINT. Yes.

Mr. BIER. And there is no recognition of that need in Federal law right now.

Ms. BALINT. And I believe we get so caught up in divisive rhetoric that we just don't look at things, the commonsense initiatives that we could take around immigration and allowing also migrant workers to work legally. There are things that—there are levers available to us that we are not using.

The other thing I am very concerned about in my home state, and I know it is not just Vermont, it is most of New England, we have an aging population. We literally do not have the workers to fill the current jobs, let alone growth that industry wants to have in Vermont, and I just don't see how we are going to get there without——

Mr. BIER. Yeah, without immigration, we are going to have a prime age workforce decline of six million over the next decade. That is enormous. So, you know, you are talking about, essentially, that is two percent of the population. So that is a significant decline in a very short period and at a point where we desperately need more people to counteract the effects of aging. You mentioned about a quarter of our population is going to be over the age of 65 by 2050. We have to have immigration to deal with that problem, that issue.

Ms. BALINT. I really appreciate it, and, you know, just to acknowledge you have worked for a more conservative think tank. I

am a progressive from Vermont, but on these issues there is a commonsense coming together that we have to focus on that and not the divisive rhetoric. Thank you so much.

Mr. BIER. Of course. Thank you.

Chairman ARRINGTON. I thank the gentlelady from Vermont, and now yield five minutes to the gentleman from Indiana, Mr. Yakym.

Mr. YAKYM. Thank you, Mr. Chairman, for holding this hearing, as well as to our witnesses for being here today.

This chart behind me paints a picture of the Biden Administration's failure to secure the southern border, which by far outpaces any of his predecessors. This is a chart that shows every single President, first term, the first 38 months of the last six presidential terms and cumulative illegal border crossings.

President Biden created this crisis on day one when he signed his first 64 executive actions that have undermined border security and encouraged illegal immigration. Despite the unprecedented surge in illegal immigration, the Biden Administration chose to deny that there was any problem at all. As a matter of fact, just 11 months in, they called it, "cyclical or seasonal." They continued to insist that the border is secure, about the 28-month mark. Even at the end of last year, President Biden and his administration officials continued to downplay the border crisis in month 37 as just "ebbs and flows," but two weeks after calling it ebbs and flows, and nearly three years into this crisis of his own doing, President Biden finally admitted in month 37 that the border is "not secure."

We have known for years what President Biden and his administration refused to acknowledge until recently, that our southern border isn't secured. No laws have changed, just the will to enforce them.

And while they have been in denial, we have seen fentanyl decimate our communities. We have seen people on the terrorist watch list stream across the southern border. We have seen state and local government budgets strain under the weight of providing food and shelter. We have seen crime with illegal immigrants assaulting police and even committing rape or murder. Last month, 50 men and women from Indiana's National Guard deployed to Texas to support its efforts to do what the Federal Government refuses to do and enforce our border laws, because the sad fact is that every state and every community has become a border state and a border community under President Biden's failed border policies.

My question first to you, Mr. Blair. You spoke about your experiences trying to secure our border through the variety of roles that you have served in. Can you share how the Biden Administration's policies worsened under this border crisis?

Mr. BLAIR. Sure. As a Border Patrol agent and an officer on the Operation Lone Star, by inviting so many people to the southern border that he has, it forces or coerces every single agency along the border to deal with that, to deal with that mass migration, and so because of that, the rest of the border is left wide open for other nefarious activities, such as Mexican cartels, such as Tren de Aragua coming up from Venezuela. All the other criminal activities are now happening between the ports of entry. Because of that, the record amount of fentanyl coming through, you name it.

Mr. YAKYM. Great, and as a follow-up, what national security threats are posed by the current situation at the southern border?

Mr. BLAIR. Yes, sir. So every single adversary that the United States has, has a nexus to our southern border. That is China, Iran, Venezuela, Russia, to include also nonstate actors, Hezbollah, Hamas. You also have ISIS, MS–13, Tren de Aragua. Every single one now sees that the Mexican cartels now are in control, and now they have the ability to now move into every single community in the United States.

Mr. YAKYM. Thank you, and Mr. Smith, you have led the charge at the local level to protect your community and prosecute illegal immigrants. What hurdles have you faced in those efforts?

Mr. SMITH. The logistics of prosecuting this many people are just overwhelming for a county my size. You know, Operation Lone Star really is the only thing standing in between the citizens of Kinney County and the open border policies of Biden.

Listening to some of the questions here today, though, it seems like a lot of the emphasis is put on the immigrant welfare, but being a Budget Committee, y'all deal with taxpayer dollars. To me, there is a huge message being missed here. Just I am astounded at what I am hearing today.

Mr. YAKYM. How has your community changed as a result of President Biden's open border policies?

Mr. SMITH. We no longer have a sovereign border. Our residents have to live in fear of hearing helicopters during the day, getting their kids in at night. You know, a lot of outside activities are very limited now. We have transformed our entire lives to live with a security threat.

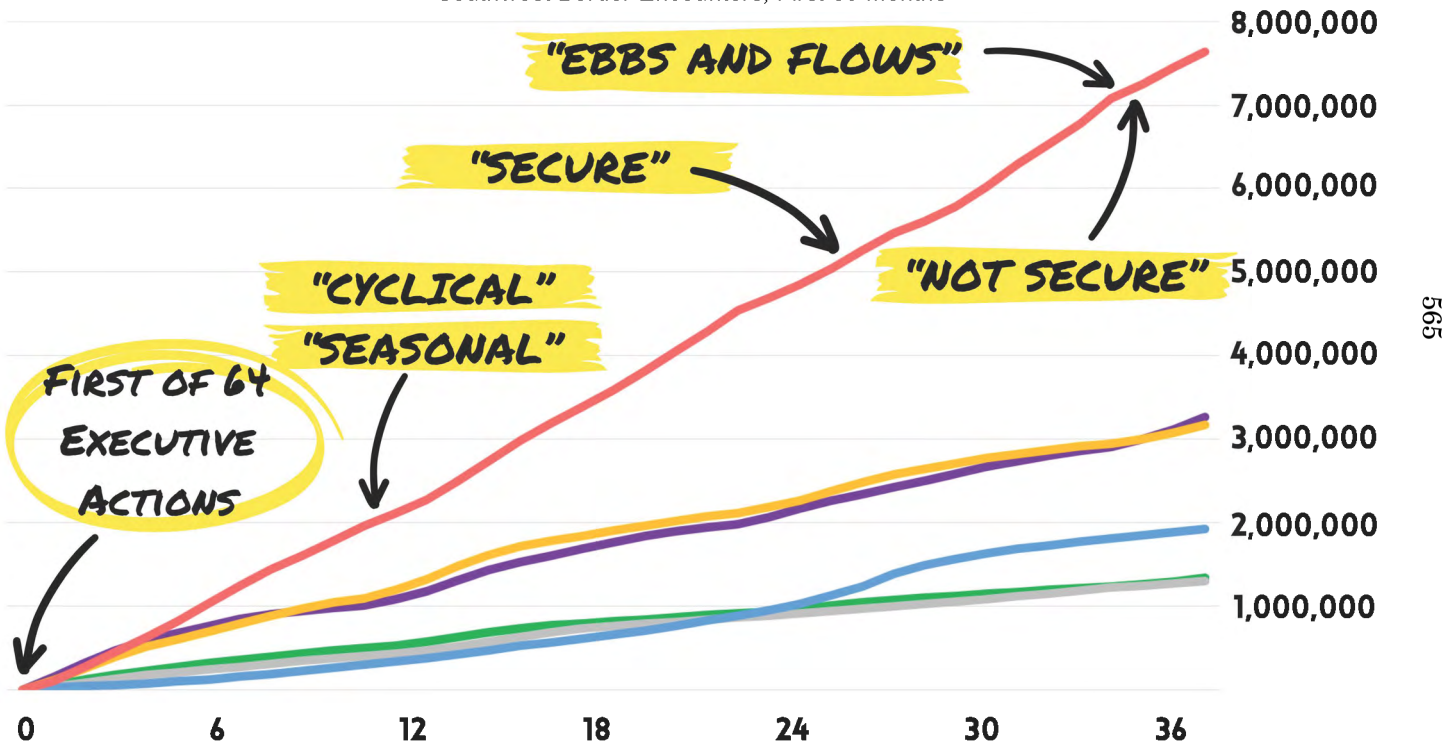
Mr. YAKYM. Great. Thank you. Mr. Chairman, I would submit to you that the numbers don't lie. The numbers on this chart do not lie. President Biden created this crisis with the stroke of a pen. He can fix it with a stroke of a pen, and I call on him to do just that.

Mr. Chairman, with that, I yield back.

[The information follows:]

BIDEN'S BORDER CRISIS

Southwest Border Encounters, First 39 Months



Chairman ARRINGTON. I thank the gentleman from Indiana. I now yield five minutes to my friend from Oklahoma, Mr. Josh Brecheen.

Mr. BRECHEEN. Thank you, Mr. Chairman. Thanks for holding the hearing regarding the cost of illegal immigration. Alexander Hamilton once said, writing under the pen name of Lucius Crassus, he said, "To admit foreigners indiscriminately to the rights of citizens, the moment they put foot in our country would be nothing less than to admit the Grecian horse," think Trojan horse, "into the citadel of our liberty and sovereignty." He later said something similar, talking about these entities, "Foreigners will generally be apt to bring with them attachments," dot, dot, dot, and goes on to say, "It is unlikely they will bring with them that temperate love of liberty."

Ms. Kirchner, you have talked about we are granting the right of citizenship right now through the Administration, the benefit of citizenship from those coming from Haiti and from Cuba. The moment they are paroled by this administration, I will submit as a member of the Homeland Security Committee as we have prosecuted this case out of that Committee, illegally in defiance of what Federal statute—the moment they come in under what Secretary Mayorkas and what this administration has brought forth, they come in illegally. We are granting them citizenship-like status. Hamilton—I just read how Hamilton warned us about that.

Can you speak to, again, what we are giving them in terms of Social Security numbers and the benefits? If you can speak to that.

Ms. KIRCHNER. Yes, sir. The parolees that are let in, they are——

Mr. BRECHEEN. 30,000 a month.

Ms. KIRCHNER. Yes.

Mr. BRECHEEN. That is what our average is, 360,000 a year.

Ms. KIRCHNER. And there are more at the border. Those are the ones flown in and there are more that are being——

Mr. BRECHEEN. Those are the flown in.

Ms. KIRCHNER [continuing]. Filled in at the border. They are treated, for the purpose of Federal benefits programs, they are treated like legal permanent residents. So for most people, that is green card holders, and that means that on day one they get work permits. Well, they have to apply, but they get work permits. They are eligible for Social Security numbers, they are eligible for Obamacare, and with the Social——

Mr. BRECHEEN. I filed a bill on that, by the way.

Ms. KIRCHNER. I am sorry?

Mr. BRECHEEN. I joined a colleague in the Senate to file a bill to stop that madness on——

Ms. KIRCHNER. Thank you, sir.

Mr. BRECHEEN. Them being eligible for Obamacare. Keep going.

Ms. KIRCHNER. And they are eligible for tax credits. I mean, we will give them back money when they file a tax——

Mr. BRECHEEN. Refundable tax credit.

Ms. KIRCHNER. Yes, exactly.

Mr. BRECHEEN. With no tax liability.

Ms. KIRCHNER. Exactly. So when they do pay taxes, they will get—it will be a net gain for the migrant. So in five years—although in five years, all of those parolees will be eligible for every-

thing under the sun: Medicare, Medicaid, Social Security, TANF, food stamps, Social Security income, Federal student aid. You know, if your kid is going to college, they will be eligible for Federal Government money to go to college.

Mr. BRECHEEN. And that is just the parolees.

Ms. KIRCHNER. Yes.

Mr. BRECHEEN. For time's sake, I want to kind of reclaim my time here and say that is just for the parolees of 30,000 a month, this administration is granting that type of status to, but then you also have ones that these children, these individuals, these illegal immigrants have children, then that child then, absent the parole release into the country, that also grants that family access that may not be paroled into these other benefits of food stamps and Medicaid. So I want to continue. Let me ask you something.

Ms. KIRCHNER. Yes, sir.

Mr. BRECHEEN. You were put in contrast with Cato a minute ago in terms of your numbers.

Ms. KIRCHNER. Mm-hmm.

Mr. BRECHEEN. Cato claims that the revenue brought in by illegal immigration is a trillion dollars. You all are stating that the revenue brought in on an annual basis is $31 billion. That is quite the contrast. One trillion, Cato says, is the total to all benefits, the state, local, Federal, a trillion dollars in revenue. Yet you all contend it is $31 billion. Cato says the benefits from illegal immigrants is $700 billion. You all say it is $180 billion. It is quite the—also, if you listen to Cato, they are to be pro liberty.

And one of the comments—I am not recognizing you yet, okay, one of the—you keep interrupting Members of Congress and it has been quite said to you, I have seen you in Homeland Security and you have been asked to be a guest, and so I would ask that you honor that. $31 billion compared to $1 trillion benefits, $700 billion versus $180 billion. I mean that is unbelievable.

So, I am going to break it down because I got 45 seconds. For anyone who would doubt your numbers or your grant deference to Cato, break it down to the smallest sample size that we can look and we see numbers and the impact. Look at what is happening in New York. They are suggesting a ten—Eric Adams, the Mayor of New York, said brace yourself. This is all wide, all government services. He told them brace yourself, from ten to 15 percent cuts. It is a Democrat mayor. So, if there is such a positive benefit, then why isn't New York seeing that? Why are they having to tell all government service, brace yourself for ten to 20 percent cuts?

Ms. Kirchner, I want to give you the last word on that.

Ms. KIRCHNER. Yes, sir. I think the difference is whether you are looking at a broader economic impact, GDP, or whether you are looking at the cost to the Federal Government, the cost to American taxpayers, which is what we are looking at. We are looking at the cost to American taxpayers, and this is being felt most acutely at the state and local level, and the National Academy of Sciences agreed on that as well, that this is something that the Federal Government, we are spending billions of dollars on it, and it is only going to increase as the numbers come in.

Mr. BRECHEEN. I yield, Mr. Chairman.

Chairman ARRINGTON. I thank the gentleman from Oklahoma. I now yield to the gentlelady from Minnesota, Ms. Omar, for five minutes.

Ms. OMAR. Thank you, Chairman. Mr. Bier, I want to give you a minute to respond.

Mr. BIER. I was just going to say that our numbers were not all illegal immigration, it was just total immigration, so all immigrants. So that is why it is not directly comparable. That is all I was going to say.

Ms. OMAR. Thank you so much. Let's keep clarifying some points to better understand the true impacts of our immigration policies. Mr. Bier, how has the restriction of legal pathways significantly increased reliance on asylum?

Mr. BIER. Well, look, I mentioned three percent of the people who are going through the green card process get a green card each year. So that right there tells you we are about 97 percent closed. People don't look at this as an option. People are going to die in these backlogs before they get green cards, and so, yeah, they look at it and they say, there is no way. This is not an option for me, and so they come to the border and they tell us that that is why they are coming. There is no visa category available to the people who are showing up at our southwest border.

Ms. OMAR. Thank you for that clarity. Can you confirm that immigration policies that facilitate legal entry have reduced illegal entries? Yes or no?

Mr. BIER. Absolutely. The parole sponsorship programs that the Administration rolled out have dramatically reduced the number of encounters of Cubans, Haitians, Nicaraguans, even Venezuelans are down compared to what they were before these programs were announced.

Ms. OMAR. And our Republican friends always say people can come here legally. Could you walk us through this Cato chart——

Mr. BIER. Yeah.

Ms. OMAR. Outlining the mess that our legal immigration system is?

Mr. BIER. Yeah. This is why 97 percent of the people who go through the process get excluded because there are all these different restrictions in place, and you go through each one. There are multiple different categories here, obviously. Refugee program, you know, you got one out of 100 million displaced people worldwide getting in. You have the diversity lottery. Again, it is a 0.2 percent chance of getting in through that. Family sponsorship, nine million person backlog there. Again, you are going to die before you see a green card through that process. So you go through each one of these things and you can see how restrictive it is. Ultimately, you end up in the employer-sponsored categories, and even those, the ones that are supposed to be for skilled and all about our economy and everything, even those are incredibly backlogged, over two million people waiting for the opportunity to immigrate legally through those.

Ms. OMAR. And finally, in terms of real costs that we should be talking about, isn't it true that immigrants generally contribute more in taxes than they consume in public benefits?

Mr. BIER. That is right. Our report looks at all taxes and all benefits of all categories. We look at the entire budget for state, Federal, and local governments, and we find $1 trillion in tax payments versus just $700 billion in benefits; $300 billion net gain from immigration.

Ms. OMAR. And Mr. Bier, is it fair to say that our debate around immigration often overlooks the actual facts and data needed to craft sensible policies?

Mr. BIER. Yeah, I think if we started with the premise that these people could be contributors, then we would ultimately craft a much more rational immigration policy than we have right now.

Ms. OMAR. Yeah, maybe it is about something else entirely. I won't speculate on what that something else could be, but I hope that some of my colleagues will reflect on why the idea of immigration or the changing face of our country seems to unsettle them.

We know that there are undeniable benefits to immigration. The real costs are rooted in poor policy decisions. Our restrictive and failed immigration policies are costing us not just economically and fiscally, but also harming global standing and dividing our communities. With something as complex as immigration, this discussion merits thoughtful consideration and not whatever this hearing is about.

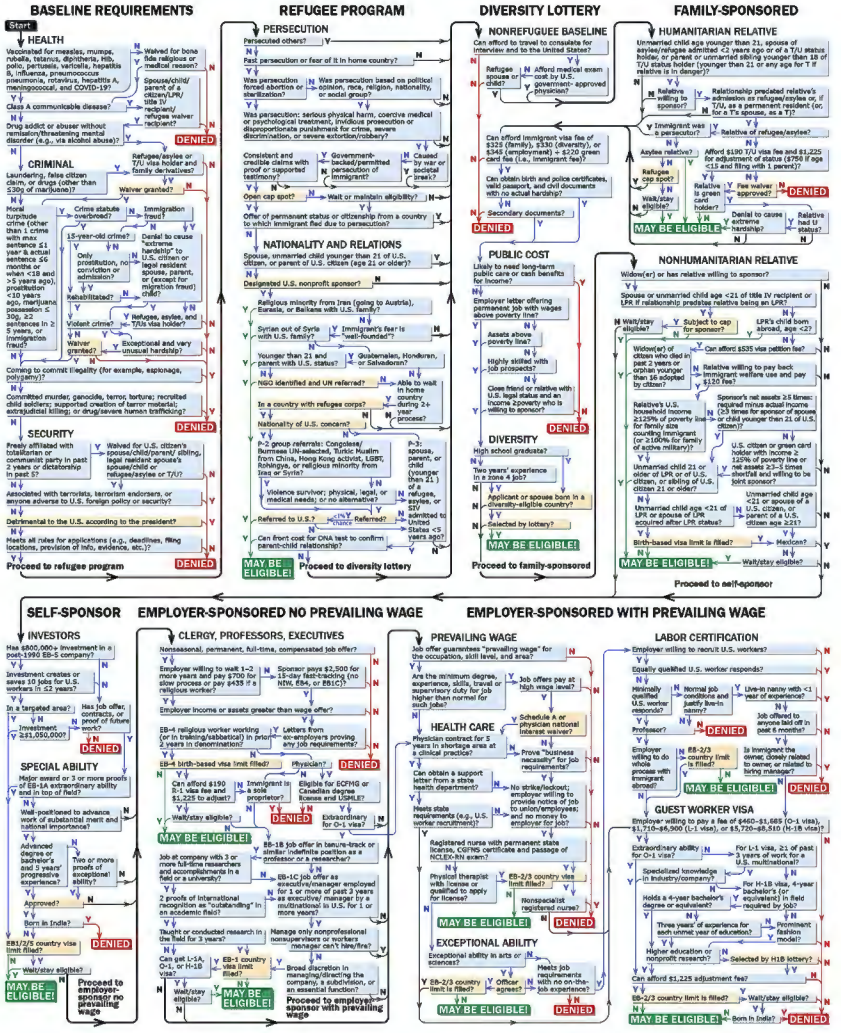
And I will just say as an immigrant, on a personal note, you know, when we arrived in the U.S. in 1995, it took my dad about two weeks to find employment. He worked at the airport and then became a cab driver. We moved to Minnesota. He worked for the Post Office until he retired in 2010. I was expected to find a job to help support the family, so were all of my six siblings. All of us have been gainfully employed since we were 16 in this country. The idea that immigrants do not come to this country desperately searching to reach that American dream is ridiculous, and it is something that I find abhorrent that is constantly discussed as we come to this country to just be on public benefits when we desperately want to be as equal as every other person and be gainfully employed and live the American dream.

Thank you, and I yield back.

[The information follows:]

United States legal requirements for permanent immigrants, applicants from abroad

Legal immigration to the U.S. for immigrants seeking permanent residence with no prior U.S. immigration history and no U.S. government association (starting the process in 2022).



Legend

Government actions | May be eligible to immigrate | Ineligible to immigrate

Sources

8 U.S.C. § 1182, 1151–57, 1184 (2022); 8 C.F.R. § 204.5 (2022); 20 C.F.R. § 656 (2022); and "Immigrant Visas," Foreign Affairs Manual, U.S. Department of State, 9 FAM 500.

Notes

Notes: LPR means legal permanent resident. IV recipient means immigrant visa recipient. This figure was excerpted from David J. Bier, "Why Legal Immigration Is Nearly Impossible: U.S. Legal Immigration Rules Explained," Cato Institute Policy Analysis no. 950, June 13, 2023

Chairman ARRINGTON. I thank the gentlelady, and now yield five minutes to the gentleman from California, Mr. Valadao.

Mr. VALADAO. Thank you, Chairman. Thank you all for testifying today to discuss the devastating cost the situation at our southern border is having on communities across the country. The issue at our southern border is complex, but one aspect that demands urgent attention is the influx of illicit drugs, particularly fentanyl. I have heard countless times from communities and law enforcement in my district about the devastating rise of this drug and the cost it has on individual safety, law enforcement, and public health.

I want to start by going over a few statistics. In 2020, more than 5,000 Californians lost their lives due to opioid overdose, and 80 percent of those deaths were directly attributed to fentanyl. In 2021, fentanyl-related overdose deaths surged by 54 percent. Last year, California seized a record amount of fentanyl, 62,000 pounds, enough to kill the global population twice over. These alarming increases in seizures and over 1,000 percent increase since 2021 underscores the severity of the crisis.

As we discussed, the cost that the open southern border has had on our local law enforcement, who are on the front lines of this crisis, we need to remember that these statistics represent lives lost, families shattered, and communities in distress. Our nation's officers deserve our unwavering support as they grapple with this crisis, allocating precious time and resources to combat fentanyl while striving to keep our neighborhoods safe. Responding to overdose calls, investigating drug trafficking, ensuring the public is safe from drug-related crimes and violence demand significant resources and stretch our local agencies very thin. These are resources that could otherwise be allocated to community policing, crime prevention, enhancing emergency services. It is our duty to combat this crisis with every tool at our disposal.

So, I want to thank you all again for taking the time to discuss this significant issue, but I want to direct my question directly to Mr. Smith and Mr. Blair. Can both of you touch on the cost that illegal drug flow from the southern border continues to place on our local law enforcement and communities?

Mr. BLAIR. Unfortunately, because we are dealing with mass amounts of illegal immigration at the southern border, most of our assets, to include resources, are now geared towards that. So a lot of the apprehensions, unfortunately, when it comes to narcotics and everything else is happening with the Texas DPS or local law enforcement, maybe that is on Operation Stone Garden or whatnot. So, unfortunately, the local law enforcement is now having to deal with Mexican cartels or foreign terrorist organizations while the Federal Government is facilitating the invasion.

Mr. SMITH. You know, the resources in Kinney County and other counties along the border are beyond stretched thin. They have been broken. Our EMS is broken. We have a volunteer fire department. It is broken. Counties are broken, communities are broken, people's lives are being devastated. We all deal with taxpayer funding dollars which are trying—some people here want to legislate not for their benefit. The taxpayers are the ones that fund this building, that pay for these tax dollars. Legislation should be implemented toward them.

I think this border crisis really simplifies down to a simple issue: when you don't enforce the law, people don't tend to follow it, and if we enforced our laws, our border would be secure, Americans would be safer, and many of the deaths that we have seen wouldn't have occurred. That is all I have to say on the subject.

Mr. VALADAO. No, I appreciate that. That is—and the mention of the cartels, that is something I think a lot of people forget to mention. I have got a community that was in my district before redistricting, and Mendota, California, it was an issue with this little tiny community, could barely afford to even have an entire police department and they were dealing with MS–13 and having to bring in state, local, and Federal resources to try to combat some of these issues they were dealing with, and it is all related to what is going on the border and it continues to add pressure on a lot of folks, but the fentanyl side of it is just one that really needs to be addressed obviously, and I know there is a lot of concern there.

But then, also, I think some comments were made earlier by Mr. Bier that on the process of immigration, I mean, I come from a family of immigrants. My mom and dad immigrated here and so obviously immigration is something that is very close to heart for me, but we have to have a process that works and we have to have a process that allows those who want to come here legally go through that process and play, I think, for the most part, a really good role in what our country is and has become is because people from all over the world see what we are and they want to be a part of that, but we have to have a process that works and I think that would help relieve some of the pressure on the border, but the drug situation is just one that you can't overlook anymore, and the cost it is having in our local communities is just something that has to be addressed as quickly as possible.

So thank you, Chairman, I yield back.

Chairman ARRINGTON. I thank the gentlemen and now yield to my friend from California, Mr. Scott Peters, for five minutes.

Mr. PETERS. Thank you, Mr. Chairman. Back home in San Diego generally we know that the border is an opportunity, not a threat. In our region, San Diego-Tijuana binational region alone, more than 150,000 people cross the border every day to shop, to go to school, to work, or visit the doctor. It is the busiest port of entry in the Western hemisphere, but we also acknowledge that we can't enjoy the benefits of cross-border commerce unless we manage our border responsibly and we need to make improvements, and right now, we have community-based organizations that are trying to pick up the slack so that we can deal with the newcomers that are coming to the U.S. to do all the terrific things that Mr. Bier has pointed out. These organizations, along with the County of San Diego, are doing their best to provide basic services to some of the most vulnerable people, but they are dipping into their own pockets to fill the gaps, and Democrats know that we need more resources at the southern border.

But the problem is that there are folks in this building who'd rather campaign on the chaos than do anything to stop it. Recall that Speaker Johnson said there would be no foreign aid unless there was border security and there was a deal. It took four months to come up with it in the Senate. A very conservative sen-

ator from Oklahoma, Mr. Lankford, a very liberal senator from Connecticut, Senator Murphy, and the deal maker in the Senate, Senator Sinema, worked for four months to come up with a deal, and they reached a deal that would have included more than $20 billion for border security.

What was in there? Fifteen hundred more Border Patrol and Customs officers, 1,200 more ICE personnel, 16,000 more detention beds, 100 new immigration judges, 4,300 more asylum officers and a change in the asylum definition that would have made asylum tougher to achieve, and 100 fentanyl-specific inspection machines for the southern border that are otherwise sitting in the warehouse waiting for us to authorize them. People complain about fentanyl, we are ready to deal with that, and an automatic border shut off if there is over 8,000 immigrants in a day, or 5,000 average over seven days, no discretion, the border would be shut. Right? That was all part of the deal.

According to Senator Murphy, he had about 20—he thought he could get 25 Republican votes in the Senate. There was some nervousness about supporting Ukraine among some of the Republican Senators, but that bill would have passed overwhelmingly and would have ensured the availability of additional immigrant visas to help the kind of legal immigration that we all acknowledge we need.

What happened was Mr. Trump decided he'd rather, literally, he'd rather campaign on the issue than solve the issue. He told those Republican Senators, don't vote for this, on a Sunday night and on the morning—the next morning, on the Monday, the number of Republicans supporting it went from 20 to 25 down to three. There was no vote in the Senate.

President Biden would have signed that bill, the toughest border bill in history. A lot of Democrats would have had a hard time voting for that, frankly, but, because there was nothing about Dreamers, nothing about all the things that Democrats have been trying to deal with, path to citizenship, didn't deal with immigration, just with border security. Just with border security.

And that bill, by the way, is still available for Mr. Johnson to bring to the House floor and force a vote on it if he is serious about doing something about it, but instead we have these academic hearings, not just in this Committee, about, you know, complaining about what is happening as though we don't have the agency as Members of Congress to fix it.

So let's pull that bill off the shelf. Let's all force a vote on it. Let's see if Republicans will support it, because, you know, President Biden can't be responsible—this is not on President Biden if it is President Trump who killed it. This is Trump who did this. Okay? And we have every ability in this building to solve this problem.

We were elected to office. President Trump isn't even in office now, but he appears to be able to push around the Republicans, at least in the Senate. If my Republican colleagues want to do something about border security, fine, let's do it. Let's put that bill on the House floor. Speaker Johnson owns the House floor. He owns the time for it. He could do it next week, and if you are serious about it, let's vote on it, but if you are not serious about it and just want to campaign on it, let's fess up to that. You want to just have

this chaos, not you, some people want to have this chaos to campaign on. They'd rather campaign on the issue than solve the issue. That is not why I came to Congress. That is not why people sent us. Let's vote on it.

I yield back.

Chairman ARRINGTON. I thank the gentleman from California, and yield five minutes now to the gentleman from Virginia, Mr. Ben Cline.

Mr. CLINE. Thank you, Mr. Chairman. I want to thank our witnesses for being here. It is important that we take opportunities like today to zero in on the cost of the Biden border crisis because without the leadership of the Chairman, if we weren't in the majority, if House Republicans weren't in the majority, hearings like this would never happen. We know that the other side would not be focused on securing our border and for all the talk about some Senate bill that didn't pass the Senate. So I don't know what shelf the Speaker is going to pull the bill off of because it is not a shelf that is in the House of Representatives. It is a bill that can't pass the Senate.

So, meanwhile, our Senate counterparts, as they talk, they have held at least 16 hearings related to climate change, but only one hearing on immigration to try and gloss over the disastrous effects of the policies pushed by the White House, this White House that refuses to follow current law. So we can talk a lot about changing policies, but until we have a President that actually follows the law with regard to parole, with regard to detention, we have laws that are currently in effect, but this President refuses to follow them. This Homeland Security Secretary was impeached because he ignored the law.

The American people are seeing straight through the obfuscation and the blustering on the other side. They know who's responsible for this crisis, and they are the—and they are frustrated because they are the ones left having to pay for the consequences, and the consequences are real.

The last time I was in Yuma, Arizona, and, as we know, about 85 percent of the fresh wintertime produce is grown in Yuma, we met with farmers, farmers who were testifying about illegal immigrants who come across the border, who tromp across their crops, who camp in their fields, and they are not allowed, because of U.S. food safety laws, thankfully, that they are not allowed to harvest or sell that, they have to destroy it at the cost to the farmer.

So then we went to visit with a hospital in Yuma. We visited a NICU. The neonatal facility was talking about how they have a certain number of beds, but that those beds are often full of illegals, forcing residents of Yuma to have to go to Phoenix to get care hours away, and that is because, tragically, the incentives for people to make this journey are so strong because they can cross the border unimpeded, that these women are sexually assaulted, raped on the way up here. They get pregnant. They don't receive any kind of prenatal care, and so inevitably, they are giving birth early. They are premature, they go into labor prematurely. They have to have a NICU available in Yuma when they get here, and so they take up the space.

So then we talk about the schools, the cost to the school divisions for, not just because you have an additional student in the classroom, but because that student is ESL. So you have those added costs.

Then you have the transportation system, the bus system. Then you have the housing impact, the rental impact. What is the impact on rents when you have a limited number of housing units available? Low-cost housing, but that impact.

So just when you are talking about Yuma, and it is right on the border, so we looked at the fencing, the holes in the fencing. When we went actually on our bus ride to the border, all of a sudden, cars started weaving in and out of our convoy because we had capital police in front and behind us. They were slowing us down to a crawl, to a five mile an hour crawl on a highway. We said, what is going on? It was the cartels operating freely on our side of the border, trying to determine what this was, and is it something that should be allowed, should stop? By the time we got to the fence, no more than ten minutes later, 15 minutes later, that part of the border was clear, but we could see across the river the school buses idling. They were waiting with migrants waiting to cross, and the cartels are in complete control.

So I can't even begin to talk about the cascading impact on costs to this country, but every country is becoming—I mean, every state is becoming a border state. Every community is becoming a border community. Mine has an interstate running through it, and if you talk to the state police about what they pull over every day on that interstate, operating illegally: human trafficking, sex trafficking, drug trafficking. It is an epidemic, and until we get a handle on it, these crises are going to continue.

So I appreciate you holding this hearing, Mr. Chairman. I appreciate our witnesses being here today, and I yield back.

Chairman ARRINGTON. I thank the gentleman from Virginia, and with our final witness from the great state of Texas, Mr. Chip Roy.

Mr. ROY. I thank my friend, the Chairman. I thank you for holding this hearing and I appreciate the witnesses being here and giving your time here.

Mr. Blair, you served in the United States military. You served in the Border Patrol. You spent over 20 years of your life doing that. Now you are at the Texas Public Policy Foundation. Can you explain for the record whether or not you believe H.R. 2 would effectively secure the border versus the Senate bill, which in my opinion, to see if you agree with it, would actually codify catch and release and codify alternatives to detention such that it would codify the current broken system? Can you quickly answer that?

Mr. BLAIR. Yes, sir. H.R. 2, along with your other bill designating Mexican cartels as foreign terrorist organizations, both those bills would secure the border. The other would not. It would actually allow the Mexican cartels to continue to smuggle and continue to have a slave trade in the United States.

Mr. ROY. I appreciate that. Mr. Smith from Kinney County, could you explain—I know you already went through your testimony. I just want to make sure the record is very clear. Kinney County, you have gone from, prior to the Biden Administration, I have heard all of this testimony here today saying—or questions from

my colleagues saying, oh, nothing is different. There is—you know, everything is all just perfectly fine under Biden. We have heard testimony that says, oh, they are doing more, you know, removals. Just speak to the actual on the ground. Kinney County, Texas, not some ivory tower sitting in Washington, D.C., where you put out papers and sit in think tanks and talk about how, you know, wonderful things would be in theory, in Kinney County, Texas, did you go from 140 crimes, roughly, prior to the Biden Administration to now something like 6,700 crimes last year?

Mr. SMITH. Absolutely. That is going to be criminal trespass, evading arrests on foot, human trafficking, human smuggling, criminal mischief.

And to speak on the Senate bill, I have talked to—I deal with Republicans and Democrats on the border. The only Democrats I have spoke—heard from that support that are here in Washington, D.C. The Democrats on the border don't support the Senate bill, but the ones here do.

Mr. ROY. I am just wondering, I mean, you probably no doubt have either met with the family or know the family, the people who died because the emergency services were not available to them because they were being used to go deal with people who are here illegally because of our broken system that the Democrats refuse to actually deal with at our border, is that family interested in reading, you know, studies from think tanks in D.C. about, you know, what we need to do with our immigration system and free markets?

Mr. SMITH. No. They want their relative back that has died. That is what they want.

Mr. ROY. Ms. Kirchner, are you familiar with the quote from Milton Friedman that you cannot simultaneously have free immigration and a welfare state?

Ms. KIRCHNER. Yes, sir.

Mr. ROY. Right. Do you believe we have a welfare state?

Ms. KIRCHNER. Yes, sir.

Mr. ROY. Do you believe that that welfare state attracts people from all over the world?

Ms. KIRCHNER. Yes, sir.

Mr. ROY. Do you believe that that welfare state is expensive?

Ms. KIRCHNER. Yes, sir.

Mr. ROY. Do you believe that under our current law in the United States Supreme Court, under Plyler v. Doe, that the people of Texas have to pay through their taxes to fund people getting an education whether they are here illegally or not?

Ms. KIRCHNER. Yes, sir.

Mr. ROY. Question: Do you believe that, and can you testify on the record here that I am correct, that there are roughly 51 and a half million people here in the United States who are foreign born?

Ms. KIRCHNER. That is about right. Yes, sir.

Mr. ROY. Is that about 15 percent to 16 percent of the American population?

Ms. KIRCHNER. Yes, sir.

Mr. ROY. Is that the highest percentage that we have ever had as a percentage of our population since we have been counting it going back well into the, you know, early part of the 19th century?

Ms. KIRCHNER. I think we have just hit historic highs.

Mr. ROY. Correct. We have now surpassed current highs and that is not really accounting for the most recent numbers piling in over the last year?

Ms. KIRCHNER. Exactly.

Mr. ROY. That 51 and a half million, has that been bolstered by roughly about a million people, a little less than a million? I want to be factually accurate, 900-and-something-thousand on average per year legally coming into the United States, legal permanent residents over the last roughly 25 years.

Ms. KIRCHNER. Yes, sir.

Mr. ROY. Right. In other words, do we, as some of my colleagues on the other side of the aisle like to say, have a closed door or an impossible way for people to come to the United States? Do we not, in fact—have we not allowed almost 20-something, 25 million people legally to come into the United States over the last two and a half decades?

Ms. KIRCHNER. Yes, sir. We have a legal system. We have a legal way to come to the United States. It is called a green card.

Mr. ROY. And right now, under our current system, are the laws being ignored by the current administration?

Ms. KIRCHNER. Yes, sir.

Mr. ROY. And this notion that people flowing across the border, I heard one of my colleagues on the other side of the aisle talk about the benefits of parole, that somehow that was fixing the system. Is that not, in fact, a backdoor way to dump more people into the United States rather than having them visibly come across the border, enraging the American people rightfully, and rather fly them into the United States to the tune of 400,000 people last year, including the State of Texas and the State of Florida, and fly them into the country under parole when the law requires a case-by-case analysis? Is that correct?

Ms. KIRCHNER. Yes, sir. Parole has become a shadow immigration system. It is essentially supplanting the family and employment-based systems. They have created a completely separate system for hundreds of thousands of people who have no legal basis to enter this country.

Mr. ROY. Well, I appreciate you all testifying here, and I would just say that if people want to submit reports, maybe they should send those reports to the families and the victims, the people who have been dying, like the six families who died from fentanyl poisoning in my school district or Laken Riley's family in Georgia, who I am sure would be delighted to read about all of the studies about what we could do with our immigration system when we have, in fact, been putting forward legislation to fix that immigration system, but our colleagues on the other side of the aisle are not interested in that while numbers continue to flood across the border.

Mr. Chairman, I ask unanimous consent to submit 34 affidavits from Kinney County landowners regarding the impact of the border crisis on their properties, safety, and livelihood.

Chairman ARRINGTON. Without objection, so ordered.

[The information follows:]

County of Kinney §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Jacqueline Stubbs Lewis, who being duly sworn stated as follows:

1. My name is Jacqueline Stubbs Lewis. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney and Val Verde County for a period of 28 years.

I grew up in the Texas Hill Country and moved to the border in January of 1996 because I married into a family that has been in this area since 1906. My in-laws and my husband's two sisters and their families have all lived in Val Verde and Kinney counties for decades. Up until March of 2019, none of us had any terrifying personal experiences to tell about illegal persons or cartel affiliated individuals affecting our day-to-day existence. I, personally, could count on one hand the number of times I had even seen people that I thought were here illegally, and I did not feel threatened by them. They were in regular clothes, traveling in small numbers, and passing through on their way to jobs in the interior, not wanting any harm. I have felt sorry for them and wished them well. There have always been people passing through our private property and our neighbors. It is just the way life is on the border. However, things are drastically different now and if this doesn't qualify as an emergency, I truly do not understand what does. We are living in fear on a daily basis with a very real invasion going on as we try to live our lives. Our sheriff's department is understaffed for the number of calls received and the Border Patrol, who have always promptly sent agents, helicopters, and dogs, now tell us they are too busy at the river processing family units to send help when the local ranchers call. Operation Lonestar is a presence on the border that is helping us feel safer because we know our law enforcement is overwhelmed and outnumbered. We feel abandoned by our federal government and do not believe they have our best interest in mind in the least. We are in very real danger and we need all the help we can get.

I have witnessed more with my own eyes over the last 4 years than I have ever experienced the entire time I have lived on the border. I have seen people climbing out of the dry Sycamore Creek bed onto Highway 90 as I drive by. I have seen people running alongside Highway 90 with a helicopter circling us overhead multiple times. I have been in two high speed chases on Highway 90, one while returning from a funeral with the chase heading towards me in 2020 and another time, I was delayed exiting Fort Clark Springs when the road was closed because law enforcement knew a chase was on the way. I have seen countless smugglers hitchhiking out of town at dark on Highway 90 in both directions after they have been released in Brackettville because there is nowhere to keep them. I know this because I have contacted the sheriff to ask. I have seen numerous smugglers waiting for rides at Stripes and Dollar General, often women, because their vehicle has been confiscated. I know this because I have asked the employees who have spoken to them. I have had 2 men dressed in camo knocking on our front door because they were abandoned by their group of walkers the day after Thanksgiving in 2020. I have seen 3 men with backpacks running to hide as it got dark 1 block from my house at Fort Clark in

2022. I have found gatorades, HEB plastic bags, newspaper, and gallon jugs of water within a block of my house on my morning walk that were dropped in the winter of 2023, and helicopters circling over my house at all hours of the day and night are commonplace at this point looking for runners fleeing into the brush after being stopped by law enforcement. Sirens are heard multiple times a day from the highway and county roads. On Christmas Eve, 2022, there was a trooper parked outside my kitchen window watching for men that had shot at law enforcement and fled from a traffic stop on the county road just on the other side of the brush and Las Moras Creek within yards of my house. I do not think they were ever found.

As a mother of two daughters, I worry most about my children being killed in a high-speed chase or being kidnapped by cartel members. They have heard and seen more disturbing realities than I ever imagined and it leaves us all on edge for what is coming in the future if this disaster is not stopped. Things are not getting better. They are getting worse. In mid-January of 2020, my oldest daughter texted a photo to me from the high school bathroom of a man's decapitated head on a fencepost. There was a yellow posterboard with a warning in Spanish by a local cartel. This was a ranch hand who was working just south of the Rio Grande whose daughter was in my daughter's Brackett High School class. We feel like we are living in a horror movie and the reality is that this could realistically happen to my husband and their dad on his own ranch, driving around by himself checking on his property and animals. If this can happen in Mexico, it can certainly happen here the longer this goes on without the federal government using border policies that do not match our existing laws. We have had groups of 30 and 60 military age men walking single file through the ranch, dressed in all black and all camo, carrying loaded backpacks we are assuming are full of fentanyl. Border Patrol tells us not to catch eye contact with them and to drop a pin when we see them, but most of the time, they are never caught.

High speed chases are common now in town and on every road, we travel in any direction. There was a bailout at the end of school in 2023 with the smuggler trying to get inside the school to hide. One of the smuggled individuals was trying to get into the car parked next to my daughter's vehicle. It is common for my daughters to come home and tell me about the law enforcement they have seen in pursuit while they are on the road. It is never ending chaos and feels like we are living in a warzone-- but we are losing. The thought of ending Operation Lonestar is unimaginable. It was be a free-for-all and complete lawlessness.

On March 15, 2021, my brother-in-law and nephew were first on the scene to a devastating head-on collision where 8 individuals being smuggled in the back of a pickup flew out upon impact and were scattered all over the highway. The smuggler had just passed them at a high rate of speed hitting a pastor and his little girl who were then trapped inside their vehicle on 277 North between Del Rio and Sonora. My nephew is still haunted by this experience as the injured Americans asked him to pray with them as they waited for paramedics on this remote highway. This high- speed chase began on RR 2523, the county road that goes through our ranch. RR 2523 has countless bailouts and high-speed chases, sometimes with vehicles driving through our fences that must be repaired at our own expense so the livestock does not get out on the highway and cause more accidents. There is nothing scarier than being out there as it is getting dark seeing a helicopter looking for runners on the ground from the latest bailout. A young man was found on our hunting lodge porch as a trooper was walking in with armfuls of groceries at the beginning of Operation Lonestar. There were not enough accommodations for all of the troopers in this area and we had offered for some of them to stay there so it would not be vacant. This man had fled from a bailout on RR 2523.

On January 22, 2022, one of our H2A workers, a 26-year-old young man from Musquiz, Mexico, was 10 miles off the county road on a ranch road when he was attacked by an illegal when he got out to try to help him. The illegal was laying in the road pretending to be dead. Our worker had a shotgun with him for protection and was telling my husband in Spanish, "I am a Mexican. He is a Mexican. He looked like he needed help and I wanted to help him." When he got up to the man, he heard people behind him getting in his truck to steal it and then realized the guy in the road had brass knuckles. They got in a fight and then the guy ran toward the truck. There were 5 men total with 2 loaded backpacks. They drove to the first fence, stopped and fled on foot, leaving our worker stranded to find the truck later out of gas.

We have made quite a few changes to our daily lives trying to feel safer in this scary environment. In March 2019, my daughters were 13 and 16. I was not comfortable with my youngest handling a handgun, so it became our new normal to have a box of rocks and wasp spray by the exterior doors of our house. I became methodical about locking the doors of our house and vehicles and repeatedly checking the locks. I have had my daughters park their car where the driver door opens at the sidewalk that goes between the hedges so they can get into the house at night in the quickest way. We have them call us from the school parking lot so we will be waiting on the porch to see them inside in case there are groups or individuals walking by in the dark when they get home from an out -town- event. We got a dog to warn us of intruders. My morning exercise routes have gotten closer and closer to home. I now walk with a gun on me and I shoot regularly at the shooting range so that I am better prepared. Our workers at the ranch now have holsters and handguns on them at all times, as does my husband.

Our lives are unrecognizable from 4 years ago, and we do not see an end in sight to this way of living. We do not feel like we are in a position to move off the border because our entire life has been built here over generations, nor do we want to move. This is our home and we want to feel like our tax dollars are being spent to protect us as American citizens. We deserve protection just like everyone else in the United States. Operation Lonestar is important and filling the gaping holes that the federal government is ignoring. Please consider the safety and wellbeing of many Americans just like us who are caught in the blatant disregard of our federal government. We no longer feel like we are living in the United States. This is wrong on so many levels and we need assistance in this avoidable crisis that is being ignored for whatever reason.

Signature

Jacqueline Stubbs Lewis
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 26 day of September 2023.

Notary Public, State of Texas

NELLIE MARTINEZ
Notary Public, State of Texas
Comm. Expires 10-20-2025
Notary ID 12546929-6

County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Cole Hill, who being duly sworn stated as follows:

1. My name is Cole Hill. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of 8 years.

My name is Cole Hill and I manage a working cattle and hunting ranch in Kinney county, Texas. I have lived on the property since 2015 with my wife and our three small children, currently ages 12, 10, and 8. From 2015-2020, I had approximately 10 encounters with illegal aliens on our property, all of which were either single individuals, or groups of 3 or less men at a time. In that same time frame, we never experienced any property damage or negative confrontations with illegals. Since January of 2021, however, we have had countless illegal aliens trespassing, increasingly aggressive confrontations with groups of illegals, costly property damages, stolen vehicles, theft of property, and multiple houses and buildings on the ranch broken into. Our peace of mind is shattered. I live, work, and sleep in a state of paranoia over what could happen at any moment to me, my family, or my neighbors, at the hands of any of the thousands of dangerous criminals who pour through our rural ranchlands in this open border crisis we find ourselves in. I will highlight just a few of the notable situations that my family and I have personally experienced over the last 2 years, though it's worth noting that these represent only a tiny fraction of the terrible experiences my family and I have had with lawless, illegal aliens since January 2021. It is also worth noting that for each one of these accounts, I have neighbors in every direction with the same stories and worse.

January 20th, 2021. I was working inside of my barn, with the door open. Just as I was walking out the door to leave, my dog jumped out ahead of me and started barking. A young male illegal, fully dressed in nice camouflage from head to toe, was just about to enter the barn through the same door we were walking out of. He was instantly subdued by the dog, and I told him to leave the way he came. He pulled his cell phone out of his pocket and walked away into the brush, but this marked the first time ever that I had encountered an illegal alien at my ranch headquarters. I couldn't help but think, what might he have done to me if my dog wasn't there? He had the jump on me, after all, and my truck was parked just outside. Did he have any weapons on him? Was he going to try to steal my truck?

Why was he sneaking up on me? These were just the beginnings of all the "what ifs" I would inevitably torment myself with between then and now.

February 14th, 2021. Day one of the infamous weeklong snowstorm that wreaked havoc on all of Texas. My middle son and I were out on the ranch gathering firewood to prepare for the upcoming cold. My wife called and frantically whispered that there were a bunch of illegals surrounding our home, banging on the front and back door and looking through our windows. We jumped in the truck and drove home as fast as we could. When I got there, there was still one male Illegal on my front porch, trying to get inside. I ran him away from the porch and asked where the rest of the illegals were, to which he lied to me and said it was only him. When he left,I searched around the back of my house and found 5 more illegals hiding in my garage. They would not leave until I threatened to call the Border Patrol. My wife and daughter were terrified. The illegals had snuck up to my daughter's window and were watching her play. She noticed them, screamed for help, and that's when my wife called me and said they had started trying to find a way in. Thank God I was close enough to home to get there and stop the illegals from getting inside. Border patrol came and searched for the group of illegals, but did not find them, and in talking to the responding border patrol agent about my concerns with the increasing illegal traffic, he told me they had been observing illegal traffic coming through our area every night. So began the new worries and "what ifs". What if they come back tonight? What if help is further away the next time a group of illegal men try to get into my house when my wife and kids are home without me? Why wouldn't they leave when they knew my terrified wife and daughter were alone in the house and asking them to go away? For the first time in our lives we wondered, what if we have to defend ourselves from illegals with deadly force?

February 28th, 2021. My introduction to property damages. It had been just over a month since my first illegal encounter of 2021, and the numbers of trespassing illegals I observed walking through the ranch was steadily increasing. I began finding discarded backpacks and clothing scattered down roads. I would find deer blinds left open and full of trash from illegals camping out in them. This particular day, I was driving my daughter to town for softball practice. As we turned out of our driveway and onto the highway, I noticed a large portion (60ft or so) of our perimeter high fence missing. I pulled over to see what had happened, and immediately saw that someone had taken pliers and cut the entire 8 ft tall fence wide open and driven into the property. The fresh tire tracks led into our ranch a short ways, where the vehicle had stopped to pick up a large group of illegals, then turned around and left the same way. I immediately had to cancel my plans of

taking my daughter to softball, so that I could fix my fence while it was still daylight. If not, I would be risking my cattle finding the huge hole in the fence and getting out onto a major highway where the speed limit is 75 mph. A wreck between a car and a cow at that speed would be devastating for both parties, as well as myself as the livestock owner. Even though it was a human smuggler and a group of illegals responsible for intentionally destroying my fence, the liability and responsibility of keeping my cattle off of the public roadway ultimately falls on me. So the paranoia and the worries continue to grow. What if I hadn't passed by and seen the missing fence? What if my cattle get out and cause a fatal accident to an innocent family of 5 like mine, all because smugglers and illegals have cut my fence down? What if the next smuggler cuts down my fence in multiple places to get through the ranch? What if I happen to encounter an armed smuggler driving around on my property? What if my daughter and I had caught them in the act? What if we can't afford to keep fixing these fences if this continues to happen? All of these "what ifs" are becoming less fantasy and more reality, and we're only two months into 2021.

April 1st, 2021. It's been about 2 weeks since my wife, daughter, and youngest son were home alone and in fear for their life with 6 male illegals trying to get into the house. With the illegal traffic rapidly increasing, and brazen groups of foreign men sneaking around our property with unknown intentions and criminal records, we decided it would be best not to let the kids go outside at all when I wasn't home. As much as they wanted to go play in the yard, we genuinely believed it was no longer safe for them to be outside with our new reality. I decided to stay home that day and just do a bunch of yard work, thinking that the kids could get their fill of outdoor playtime in while I was around. I had been mowing the yard for no more than 15 minutes, when I turned a corner around the house and saw 5 male illegals crawl under the fence around my barn, and come running towards my house. I shut off the mower and immediately started yelling at them to stop, and frantically shouting at my kids to get into the house at the same time. The guys kept coming, and I ran inside right behind the kids to grab a shotgun that I was now keeping by the front door. It wasn't until I stepped back outside and racked a round into the gun that the men stopped and ran back towards the brush. They had made it to within 30 yards of my front door in that time, and this encounter solidified our fears that these illegals who were now trespassing on our property every day and night would inevitably put us in more and more dangerous situations. We now feared for our safety in the most innocent of situations, like playing in the yard as a family. We feared that defending ourselves against a group of these men on our own property was only a matter of time.

July 31st, 2021. Fast forward just a few months. At this point, illegal aliens were trespassing on our ranch every day and night, and had been for months on end. We'd have multiple groups on the ranch at a time, upwards of 50+ illegals per day, and those were just the ones that I was seeing and counting with my eyes and with game cameras we had set up to monitor the traffic. We had had a recent string of groups of illegals breaking into one of our ranch workers' houses. They had broken the windows to get in, they had stolen all the food out of the fridge, they tried to steal one of the ranch trucks that was there, and they had basically trashed the house and the truck in the process. I had just finished letting DPS out of the ranch after they had apprehended a group of illegals for breaking into that house, and I headed to our main hunters lodge to check on it for the day. Checking all of our facilities for break-ins had become a daily necessity. As I pulled up to the lodge, I could see the side door had been kicked in. I quickly pulled around to the front door and called the same DPS guys I had just sent away to tell them to come back. My adrenaline surged as I ran to the front door and flung it open. The last of the illegals was fleeing out the back door as I made entry. The first thing I noticed was a loaded rifle laying on the couch, bolt half closed and pointed directly at me. Then a shotgun on the floor across the room with shells scattered all around it. I had no idea how many illegals were still left in the house, but panic set in as I quickly realized that the guns that were scattered about had come from our secured gun room and I knew there were plenty more they could have gotten their hands onto. I quickly cleared the house, only then realizing that the illegals I saw running away were the last ones in the house. The lodge was completely ransacked. They had gotten into every room in the house, including the locked gun room. They had stolen all kinds of camouflaged clothes, hunting gear, knives, binoculars, spotting scopes, etc. They had defecated in all the toilets, bloody, liquid diarrhea in every toilet without flushing and they left their used toilet paper on the floor. The house was a disaster. After investigating the scene with DPS and Texas Rangers, there's no doubt they were in the process of loading the guns and were clearly facing the front door with them when I made entry. If I had been just seconds later coming in, they could have shot me with two different guns, and no human being could ever convince me that they weren't about to.

At this point in time, Operation Lone Star was picking up some momentum. I had begun calling DPS regularly to apprehend illegals and charge them with trespassing charges. In fact, if it wasn't for TX DPS being there on my property already that day, who knows what the outcome of those break-ins would have been. That group of 8 illegals who tore the lodge apart and stole thousands of dollars worth of gear was apprehended the next morning, with almost everything they had stolen still in their possession. I have used trespassing charges through

Operation Lone Star on dozens and dozens of illegals that have been apprehended on my property. There are really no other consequences for these illegal trespassers outside of Kinney county sheriff's office and Operation Lone Star. I only wish there were stronger penalties for smugglers, trespassers, and anyone else who is caught by DPS in their campaign against what can only be described as an intentional, aggressive invasion of our Texas border. I will never again have the same peace of mind in what should be, and used to be, a safe, simple way of living. The dreams I had of raising a family in a rural environment, free from the worries of criminals and dangerous people are completely shot due to our federal government's mishandling of the border crisis. Thank God Texas is doing something about it. It may not be perfect, it may not be cheap, but neither is letting millions of lawless unvetted, unknown people with unknown intentions enter our country illegally and destroy all of our beautiful ranchlands in between along the way.

My accounts may seem like redundant exclamations of doom and gloom, that's because they are. There is a redundant, obvious, clear pattern of danger, destruction, and fear that comes with illegal immigration. It happens everyday for those of us who live here, and we're tired of it. These accounts I've detailed are only from the first half of the first year of the Biden/Harris administration's failed border policies. If you're curious how things have gone for us between then and now, just copy, paste, and repeat. I've had numerous illegals tell me they're going to come back and kill me when they get caught out here. Our fences have been cut approximately 100 times, we've had cattle out on the highway multiple times because of it, constantly have water lines broken so they can fill their water bottles, we've had more than a dozen break-ins, we've had vehicles and atvs stolen, all at the hands of illegal immigrants and all of which adds up to easily $50,000+ dollars out of our pocket to repair damages made by these lawless individuals. Approximately 95% of the illegals who trespass through our property are young males, not seeking asylum. Of the few women that have come through, I have found 2 abandoned by their coyote and left for dead with no food or water. One had been raped repeatedly on her trip, and the other had a broken leg and a broken arm. I've had Border Patrol come out approximately 20 times to try to find illegals who were either dead or dying. All of this has happened to me in the last two and a half years, and outside of the efforts of Operation Lone Star, it's not getting any better. Our numbers and frequency of illegal alien trespassers has slowed down over the last year, and I believe that is mostly due to the success of Operation Lone Star. Instead of groups of illegals on the ranch every day, we're down to several groups per month. They know that if they get caught out here, we will absolutely be pressing trespassing charges on them.

Signature

Cole Hill

Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 27 day of September 2023.

Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

County of Uvalde §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Ben Binnion, who being duly sworn stated as follows:

1. My name is Ben Binnion. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Maverick County for a period of 10 years.

I am a Ranch Foreman and Wildlife Biologist on 23,000 acres in Maverick County and have held this position for 10 years.

I have dealt with illegal immigrants crossing the property I work and/or live on my entire life but the last few years has been incomparable to anything in the past. We recovered 23 dead bodies of illegals in one calendar year. I have hundreds of these individuals crossing the property nightly, causing destruction to fence, and leaving literally tons of trash and waste in their wake. I felt compelled to move my family off the property due to safety reasons. Weekly we were confronted by illegals at our home demanding help to charge their phones, provide them with water or requesting transportation. I didn't want my wife and children to be in direct danger any longer, so we moved and now I commute daily. Also, I did not want to have to explain a rotting dead corpse to my young children, as we found multiple dead bodies every summer.

Property damage is mostly cut fences and trash. We are picking up multiple cubic yards of garbage left from illegal immigrants every month. We have hired additional labor just for trash cleanup and fence repairs. My estimation to get our fences back to the condition they were in 3 years ago is $300,000+. That is not replacing but just to the condition they were in before this started. This problem is costing us, one property 15 miles from the border, 6 figures annually. I'm not sure how we can sustain this added burden, or why we are expected to sustain it.

We have added additional security measures such as heavy-duty locks, hurricane shutters and dozens of security cameras throughout the property. We're currently exploring other options and considering hiring full-time security personnel for the homes on the property. Out of the thousands of people I have seen or gotten pictures through security cams, the vast majority are adult males. Only 4 children seen in last few years.

A number of properties surrounding us are being put up for sale due to these issues and not selling because no one wants the added burden. This was once a hunting and ranching Mecca of the state but now no one seems to want it due to this huge burden that no one outside of the people that live here seem to care about.

I have attached photographs to this affidavit and I certify they are true and accurate depictions of what they show.

Thanks,

Ben Binnion

Signature

Ben Binnion
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 27th day of September 2023.

Notary Public, State of Texas

FRANCISCO LARA
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 09/20/26
NOTARY ID 13397479-7

County of Brooks §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Urbino Martinez, who being duly sworn stated as follows:

1. My name is Urbino Martinez. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.

I have been the Brooks County Sheriff since 2017, and I was the chief deputy from 2009-2016.
Since January of 2009 through present, Brooks County Sheriff Office has recovered nine hundred fifty-six (956) undocumented crossers who have perished in the harsh ranch land terrain. We estimate that we recover less than half of all those who perish, which constitutes a health crisis.

United States Highway 281 is part of the Gulf Coast corridor, which is one of the most active drug and human smuggling corridors in the United States. The Falfurrias checkpoint is one of the busiest checkpoints in the southwest corridor in regards to undocumented crosser apprehensions and narcotic seizures.

Because of Brooks County's geographical location and the Border Patrol checkpoint, it has its own very unique challenges. In most cases, smugglers/coyotes drop off undocumented crossers. They are led by the smugglers and made to walk east and west of United States Highway 281, moving north through private ranch lands, to then get picked up on Texas Highway 285 and other roads by other smugglers who will then transport them on the Gulf Coast corridor to cities north. In other cases, local gang members or others seeking financial gain, who live in the county, drive their human and drug loads through private property by cutting locks and fences.
This year we've had 90 911 calls, 999 rescues, 30 smuggling pursuits, 25 bailouts, 23 vehicle checkpoint circumventions, 32 stolen vehicles, 37 gang members, and 93 smuggling cases. It is currently costing the county $4,000 a week on fuel, patrolling for illegal traffic. We also help our landowners by repairing damaged fences, which averages approximately $600 for 100 feet of barbed wired fencing, and into the thousands for net and high fence wire.

The Mexican cartels and the transnational and statewide gangs continue to increase the level of organized criminal activity in the Rio Grande Valley and

throughout the state. We, who live in and near border communities where cartel drug and human smuggling operations are prevalent, face additional public safety issues such as felony vehicle evasions; pseudo police stop; extortion, sexual assaults of illegal aliens. The gangs and cartels have contributed to the deaths of undocumented crossers on Texas ranches and farms.

Brooks County is a small rural area with limited resources. It is home to a United States Border Patrol Checkpoint, located on I-69 West corridor thirteen (13) miles south of our county seat, Falfurrias, Texas. Brooks County, which consists of an estimated population of 7,976, comprises 943 square miles of land mass. United States Highway 281 (I-69 West) is a major artery from the Rio Grande Valley area and leads to Houston and San Antonio, Texas, and other destinations leading to the interior of the United States. Corridor II is the heaviest Alien and Narcotics Smuggling corridor used in South Texas. The apprehensions and seizures along this corridor are among the highest in the country and the Falfurrias Checkpoint is the busiest checkpoint in the country in regard to alien apprehensions and narcotic seizures.

As added information, from 2009 through fiscal year 2013 the County incurred the added burden of six hundred and twenty-eight thousand, one hundred seventy-two dollars and ninety-three cents ($628,172.93) for the cost of recovering and processing dead bodies.

Signature

Urbino Martinez
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 26 day of September 2023.

Notary Public, State of Texas

LETICIA VELA DAVILA
NOTARY PUBLIC
STATE OF TEXAS
ID# 123944893
EXPIRES 5-18-2024

County of Terrell §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Dale Carruthers, who being duly sworn stated as follows:

1. My name is Dale Carruthers. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Terrell County for a period of 55 years. My family is a generational family of Terrell County and has been in this County for over a hundred years.
I am Terrell County Judge Dale Lynn Carruthers and the border Crisis is an emergency. Terrell County signed a Declaration of Local State of Disaster Dated April 21,2021. A second Declaration of Local State of Disaster was signed on July 5, 2021. I testified on July 22, 2021.State Capital: Texas Legislator hold Border Security Forum at Capital
I am also a rancher in Terrell County our ranch borders the Rio Grande and we have experienced an over flow of illegals trespassing on our property and damaging fences and waterlines.
In May of 2021, 49 illegal military age men dressed in camouflage were apprehended in a pasture right behind our home. Since then, groups have continued to cut fence line and disrupt the ranch. I would say about 98% of all the illegals that have trespassed on our ranch are male.
In my community high speed pursuits have become a common occurrence. We also experience bailouts directly exposing my community to eminent threat due to nefarious activity. During high-speed pursuits accidents occur and our emergency personnel are deployed out leaving the community vulnerable, situations like this deplete our counties resources.
Without the help from Operation Lone Star our community of less than 800 residents would not be able to survive this. My community feels safer with the added support. We depend on the resources provided.

Dale Carruthers
Signature
Dale Carruthers
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 26th day of September 2023.

Kelli Ellis
Notary Public, State of Texas

KELLI ELLIS
JUSTICE OF THE PEACE
STATE OF TEXAS
EX-OFFICIO

County of Kinney §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Beth Ann Smith__, who being duly sworn stated as follows:

1. My name is _Beth Ann Smith_. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in _Kinney County for a period of _52___ years.

My husband and I have ranched in Kinney County for over 50 years. We are accustomed to having illegals move through this area. However, we have never been inundated with the number of illegals we are currently seeing on our property. We have cameras at gates throughout our properties, and we see many "gotaways" who are never apprehended.

This is a true border crisis. Our nation is being invaded by illegal people who often have criminal backgrounds. These are not the typical illegals looking for work who have crossed our ranches for years. They are doing damage to our ranches—cutting fences, leaving gates open in our livestock pastures, cutting our water lines, leaving water valves running wide open, destroying electrical boxes and breaking into ranch homes. You cannot leave a key in any vehicle for fear it will be stolen. We have had smuggling vehicles run through our exterior fences 7 times. I estimate we have had damage in the amount of $50,000. We have been required to replace a mile of fence which borders US 90 due to the frequent times the fence had been cut. It was no longer repairable.

I do not feel safe at any time and I always carry a pistol with me. I have had illegals slip up on me in my yard when I was alone, and they have attempted to flag me down on the highway. I never leave my house doors unlocked, day or night. This past Spring, we had an illegal knock on our bedroom and bath window late at night. This was very frightening and I immediately called for help from my family and Law Enforcement. I have no idea if he was attempting to break in or steal property. Our dogs had cornered him near our home. He was apprehended. This is what we deal with daily.

We always inform local law enforcement when we spot illegals walking or picking up a smuggling load. Most of the walkers are never captured. These people are almost always males; I estimate 99% of them are men. I have only seen women two times on our cameras.

I greatly appreciate the law enforcement in our area. They are trying to stop this flood of illegal people, but they need more personnel, and the illegals need to be stopped at the border instead of allowing them to enter our property which is 20-30 miles from the border.

I am thankful for Operation Lonestar trying to assist Texans and indeed, they are assisting the entire US even though people do not realize this.

Signature

Beth Ann Smith

Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 22 day of September 2023.

Nicole M Mata

Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

Sworn Statement
of Tim Ward

My name is Tim Ward. I am giving this sworn statement of my own free will. I am a 4th generation resident of Kinney County. I am 70 years old and I have lived on the same ranch for the past 38 years.
The current border crisis is better termed an invasion of our country. It is a critical emergency situation that places the citizens of our nation In harms way. I am seeing large groups of illegals going thru our property day and night. I have had 69 cuts in my fences permitting large groups to quickly enter and trespass across our property. I returned one evening and was approached by 4 illegals in my own carport. They demanded that I take them to San Antonio. When the answer was no. They approached my vehicle and noticed a pistol on my dash. With this observation, they turned and walked out to the highway. I hazard to think what could have happened had I not been prepared. A tremendous amount of debris is being left on our property. The livestock and wildlife attempt to chew on the plastics resulting in a huge death loss to the wildlife and livestock.
Our wells are tampered with as the illegals attempt to recharge their cell phones. I am unable to sit in our backyard in the evenings due to The fear of being approached by the illegals. My vehicles have been damaged by those attempting to gain entry. Smugglers in vehicles have run thru my fences on a regular basis. On March 17, 2023, on hwy 90 2 miles east of Brackettville an east bound vehicle with illegals, left the roadway at a high rate of speed taking out 500 ft. of game fence then drove around in my pasture looking for a way out. The vehicle sped thru a second game fence made a U turn and came back thru the same fence a second time destroying another 300 ft. of game fence. Conservatively, I have suffered in excess of $100,000.00 in damages since the invasion was ordered.
Our lives are not the same. I am forced to carry arms to protect myself. Almost every night I am awakened by banging on our windows and

doors. I do not feel safe in my own home. I live with the uncertainty of what the next hour might bring.
It is obvious that our Federal Govt. has violated its on laws and authorized, financed and even utilized the U.S. military to facilitate this invasion.
Our local law enforcement and first responders are overwhelmed. If it were not for Operation Lone Star, I would be forced to vacate our home and property. Prior to this govt. sponsored invasion, I would have never thought that our Federal Govt. would be our biggest enemy.
It is a sad day for the United States of America, the land of the free and the home of the brave.

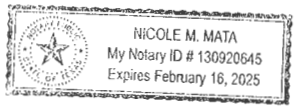


Tim Ward

Sworn to and subscribed before me on the 27th day of September 2023,



Notary Public, State of Texas



County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Brad White, who being duly sworn stated as follows:

1. My name is Brad White, I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of 20 years.

"The foreign invasion began Feb. 2021. This is a national emergency. Personal property has been trespassed on, food and clothing stolen. Watertanks damaged - leaving the water to drain out, float valves ruined. High game fences cut or driven through during high speed pursuits - leaving huge areas that allow livestock to be released onto highways. These acts became daily realities that continue to this day.
Approximately 99% of illegals are male, military age 18-35 years old. Encounters were predominantly in the mornings. The most dangerous being when I entered houses on the ranch to check them. Illegals would escape through the back door while I entered the front door. Sometimes getting between me and my vehicle. To counter this danger I have added security lights and I'm always carrying a gun. If Governor Abbott had not initiated Operation Lone Star, I feel things would be 1,000 times worse. Damage to me personally has exceeded $ 20,000. and it appears there is no end in sight. I have pictures to back up my statements. Volumes could be written about what has happened in our county over the past 2½ years, but I'm running out of space on this paper. We need help!

Signature

Brad White
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 12 day of September 2023.

Notary Public, State of Texas

GENE C SLATE
Notary ID #12384797
My Commission Expires
July 2, 2025

County of Kinney §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Jamie Ballew, who being duly sworn stated as follows:

1. My name is Jamie Ballew. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of forty-two years.

This border crisis is a serious emergency, because while thousands of illegal aliens (IAs) are crossing the border every day and occupying Border Patrol with processing, many others are coming through our ranches undetected. Those coming through our ranches who are apprehended are often discovered to have criminal records and are sometimes armed.

The heavy foot and vehicle traffic trespassing through the ranches which we operate has been very disruptive to our ranching operation. We must regularly repair fences that are cut by IAs crossing into and through our ranches. Our livestock often gets out onto highways or over onto neighboring ranches when this happens. This requires many hours of labor to retrieve the livestock and repair fences. Just this past weekend, on 9/24/23, we received a call that some of our cattle were out on the right-a-way of US Highway 90 east of Brackettville. When we went to retrieve them, we discovered that our fence had been cut, in an area where this happens regularly, allowing cattle to escape. This is dangerous for not only our cattle, but more importantly for drivers on the highway. Also, recently a smuggler drove over the gate at our ranch entrance, ruining the gate and the automatic gate opener. They then drove through our fence into a neighboring ranch. That one incident caused us considerable expense. Illegal aliens traveling through ours and other ranches cause damage to water lines, pumps, and other equipment, which is very costly. We also regularly pick up trash, discarded clothing, backpacks etc. on our property. There is no doubt that the current border crisis has cost us many thousands of dollars in material and labor.

Because of the large number of illegal aliens trespassing onto and crossing through our ranch we no longer feel safe on our own property. It is not safe to walk away from our house for exercise for fear of being confronted by a group of IA's. Just working in the yard or walking out to our storeroom requires vigilance. I worry daily about my husband, and the people that work with him, as they often work in remote areas with little or no cell phone reception. This border situation is a constant source of fear, stress, and anxiety for all who live in this area.

We have a camera installed at the highway entrance to our ranch, which is about ½ mile from our home. We see photos and videos of people coming through and over our gate at all hours of the night. This sometimes happens several times a week. The vast majority are males. Sometimes we will see a group of males with one woman traveling with them.

We are very grateful for Operation Lone Star, as the increased law enforcement in our area is helpful. If they are not already occupied following or apprehending IAs and smugglers elsewhere, they are very responsive when we notify them of someone trespassing onto our property. If we did not have Operation Lone Star, we believe our county would be totally overrun by dangerous smugglers and IA's.

Jamie Ballew
Signature

Jami Ballew
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 26 day of September 2023.

Nicole M. Mata
Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

County of Tom Green§
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared
Cindy Earwood Whitehead, who being duly sworn stated as follows:
Cindy Earwood Whitehead
1. My name is _____. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Tom Green County for a period of 2 years.

My family has owned ranch property in Kinney County for five generations. We had been safe without property damage for over 100 years, until the Biden administration opened the border. We have had fences cut multiple times, gates run through, a hunters vehicle stolen and bailouts on our property. Fence and gate repair is not only expensive and time consuming but makes the entire fenceline weaker. Some of these fences are new and some have been in place for over 50 years.

Hunters have been fearful for their personal property and lives. Their lease payments to us help make it possible for us to continue to operate our ranch. If this chaos continues the hunters will give up their leases.

I fear of being involved in a highway accident every time I drive on FM 3008, Hwy 90, and Hwy 277. The illegals and smugglers driving at excessive speeds as well as dodging law enforcement endangers innocent citizens 24/7 on all Texas highways.

In general, illegals are being treated better and allowed to do things the American citizen has never received nor wanted.

Cindy Earwood Whitehead
Signature

Cindy Earwood Whitehead
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 19 day of September 2023.

Notary Public, State of Texas

BRENDA D. GONZALEZ
Notary Public, State of Texas
Comm. Expires 02-03-2026
Notary ID 132908601

BRENDA D. GONZALEZ
Notary Public, State of Texas
Comm. Expires 02-03-2026
Notary ID 132908601

County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Stanford Conoly, who being duly sworn stated as follows:

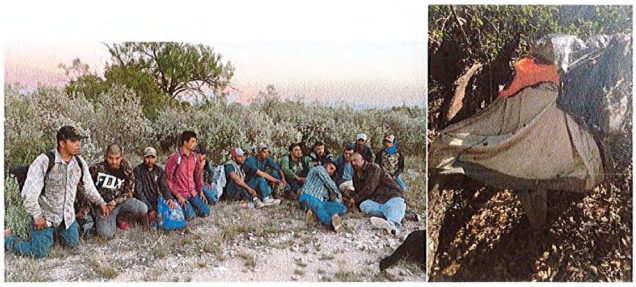
1. My name is Stanford Conoly. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of 65 years.

September of 2021 brought an onslaught of illegals crossing through our ranch and threatening the safety of my family. Here are the first of many illegals, mostly young males, that crossed over onto our property by way of cutting or tearing down our perimeter fence line.

Groups such as these were not concerned or respectful of the damage they caused as they trespassed through our property. They left gates opened and damaged water tanks and troughs by breaking the water spickets and letting it free flow. We added faucets to the pumps so they could turn them on and off and they left them on every single time.
The illegals also left piles and piles of trash, makeshift camps, clothing and backpacks in areas where the cattle had access and would chew and eat on the items left which made them sick.

In October 2021, we had several bail outs which tore through our fence line. Once the integrity of the fence is cut it is impossible to return it to its original strength without replacing a large section of that fence line at considerable cost to me.

Our hunters' camps have been broken into and left in a mess.



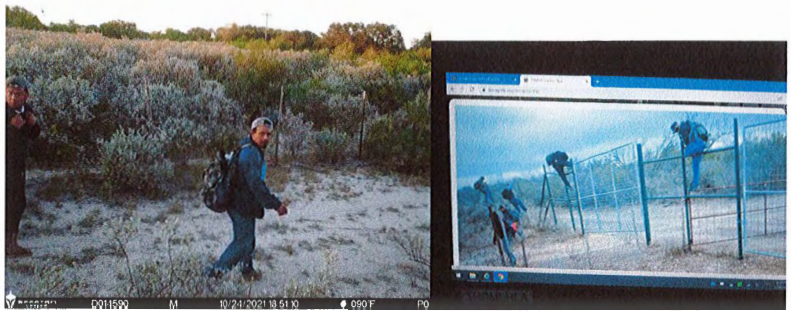


The year 2022 found a constant flow of illegals through our property and county and they often traveled right by our home. My wife was home one day alone, and an illegal came up to the house trying to get in. She was very upset that he would come into the house. We called the Sheriff's Office and DPS and they were there in five minutes and apprehended the illegal sitting under a carport. There have also been numerous occasions where my son and I would be out working on the ranch and large groups of illegals would walk up on us. One group of about 15 decided to fan out around us as we were working, and this alerted us to return to our truck and put on our firearms. They left and we called the DPS Operation Lone Star Brush Crew Sergeant.

As I am writing this affidavit today, there are Border Patrol and Operation Lone Star searching a large area around our house with a helicopter flying overhead. Presently, there is an influx of illegals being smuggled across the roads we travel every day as well as an uptick in foot traffic that often is seen right by our home.

Our continued safety here on our remote ranch is contingent on the presence of Operation Lone Star and our Sheriff's Deputies. The OLS and SO have been there for us with every concern and allows us the ability to remain living on our ranch. The DPS Brush Crew Sergeant keeps in contact with us to ensure our safety as we live life out here along the US/Mexico border.

The cost that this open border and illegal aliens trespassing on our property has caused us is valued on the low end of $20,000.00 for repairs and damages to both property improvements and livestock.



Signature

Stanford Conoly
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 22nd day of September 2023.

Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Thomas Page Day, who being duly sworn stated as follows:

1. My name is Thomas Page Day. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of 28 years.

I Thomas Page Day own and operate a family ranch in Kinney and Val Verde County that is approximate 10,000 acres. I have lived here since May of 1995; the ranch has been in the family since early 1900's. The ranch is used for livestock operation and main source of income is our hunting operation.

Before January of 2021, the illegal aliens were very few thru the ranch. Since this new administration took office our IA numbers have grown out of control. On June 7,2021 Border Patrol caught a group of 4 middle-aged males below our house that I reported. Shortly after it became the worst influx I have ever seen. Now my family and I live in a state of fear and concerned for safety. We don't go to the barn to work 4H animals or around the ranch unless armed or together it is sad when I can't live a normal life not knowing what's around the corner. When Border Patrol gets overwhelmed by give ups AKA (Asylum Seekers) we suffer. If it wasn't for Operation Lonestar to help I don't even want to think how crazy our ranch would be. October 19,2021, Border Patrol caught a group of 35 adult males below our house. I would say that 90 percent of these groups that trespass thru the ranch are military age males. December 1,2021, I got a call from my wife as I was heading back to the ranch from Uvalde, Texas. She stated that she came out of house after she got the kids on the road with my niece for sports practice and witnessed approximate 14 military aged males coming toward her at the house. I told her to get in the house and I would be there shortly. I contacted State law enforcement (Operation Lonestar) to help as Border Patrol was not available again. Well, when law enforcement showed up the IA's had split. Eventually we apprehended 7 of the IA'S with DPS, but the others got away. My wife was so scared that she doesn't like me to leave the house anymore. The year 2022 didn't slow down I had many occurrences with IA'S on the ranch plus my hunters reported many encounters while sitting in blinds trying to hunt. Our

hunting business has taken a server loss due to this border crisis. My hunters are scared for their safety because of what I tell them or what they see on the news and a lot don't want to come down from out of state to hunt with me because of this national emergency. March 24, 2023, I had a youth group that comes and hunts 4 times a year. We went over to my aunt's ranch that is in Kinney County Texas to setup a blind for turkey hunting. One of the 12-year-old girl was looking around the area as they adult mentors put up the blind and she came upon a deceased AI. I hated for this to happen to such a young person, so we had to explain to her how bad it was and the problems we are facing with this border crisis and national emergency. On May 12,2023 my daughter heard a loud noise outside of our house and went to see what it was. She came back in and told us that a older truck had just drove by at a I high rate of speed and opened the gate by the house and headed towards the highway. I quickly contacted DPS to notify them on the truck. Thanks to the quick actions of DPS and Kinney County Sherrif caught the illegal alien with fence wire still on the truck. Upon further investigating the trespasser was here ILLEGAL and had broken into a neighboring ranch's hunters travel trailer and proceeded to steal the truck and cut and drive thru 2 fences and a gate on our property.

In conclusion our property and lively hood has taken a severe economic loss due to this border crisis and national emergency that needs to be shut down. I have had over 70 holes cut in our fences and I don't even have time to fix them right just patch them up. The cost of repairing all the holes would be almost $30,000 dollars or more. Just think if you had the same thing going on in your back yard, it would upset you too, our back yard is just bigger. If it wasn't for Operation Lonestar helping, just think of all the illegal aliens that would be here untouched, of those people untouched who are they??? TERROIST, MURDERS, SEX OFFENDERS. We need to recognize this national emergency and close this open borders down. Just because it doesn't affect you adversely it will, wait for crime to skyrocket, and who's going to pay for all the well fare of these trespassers in our country.

Signature

Thomas Page Day
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 25 day of September 2023.

Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

County of Kinney §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Stella Hagler, who being duly sworn stated as follows:

1. My name is Stella Hagler, I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of 41 years.

Everyday we face some kind of challenge that we have never had to deal with before. One of the scariest was we were in the middle of an illegal chase on Highway 90. The car was speeding going ~~East~~ West and we had to pull of the road, then the illegal turned around and headed back to the East & we had to pull off the road as he headed towards us in the wrong lane. We had to do this more than once. We also receive ALERTS almost on a daily bases to keep your doors to your vehicles and homes secure. We have also had to pick up trash & stolen things on the ranch and the illegals left a frig & freezer door open and everything was ruined. You are on alert at all time and I don't feel safe in my own home or at the ranch. I have to look out before I walk out.

Stella Hagler
Signature

Stella Hagler
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 25 day of September 2023.

Nicole M Mata
Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

I, J.R Hamilton have been Ranching all my Life Growing up, It was never concerning to come across an illegal Immigrants on the ranch. in the past my mother would usually provide a sandwich and a drink of water, and they would happily be on the way.

Not the situation Today.

Today our southern border is in a severe crisis.

Today as of yesterday, and of last week in fact since the Biden Administration has taken over. My fences, my water troughs, my vehicles, and my family care all subject to violence and abuse on a daily occasion.

My director of operations on the Dos Angeles Ranch (Cheryl Foster) had me and the Sheriff (Brad Coe) both on the phone when apparently 10 illegals tried to kick in the door & break into my lodge. 8 illegal aliens were arrested that night, they also caught my ranch on fire from campfires on the same night.

Over 95% of the immigrants crossing my ranches are male between the ages of 20-40.

Most are seen in the early morning & late evening.

I would Estimate my yearly cost of damage on the ranch to be between 50-60 thousand a year.

We need a secure southern Border to eliminate the problems we have today.

J R Hamilton — 9-15-23

J.R Hamilton — Date

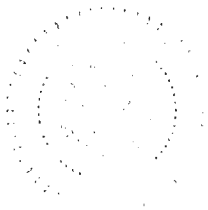
State of Texas

County of Dimmit

Sworn to and subscribed before me on the 15th day of September, 2023, by J.R. Hamilton

Yolanda M. Jaime

Notary Public's Signature



County of __Harris_____§

State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared

_____Karen Hoffman_____, who being duly sworn stated as follows.

1. My name is _____Karen Hoffman_____. I am of sound mind, over the age of 18 years, Capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Harris County for a period of _____23_____years.

The effects of the Biden administration's policies on immigration are devouring our God given rights of Life, Liberty and the Pursuit of happiness. We citizens are subjected to the very real possibility of Fentanyl poisoning. Every person is subjected to crimes committed by illegal aliens and emboldened criminal citizens. Criminals are released by judges back to the streets. Nobody can feel safe.

Liberty ... it's our money paying for this illegal alien fiasco and the war in Ukraine but, using our voices can get us arrested against Article 10 of the Human Rights Act. We seem to have no say about expenditure. We see on the television and internet that tens of thousands of military aged men are entering our country. It is difficult to live in general, not knowing if we are going to be attacked in our homes. Anybody at any time can be tricked into ingesting fentanyl. More people die from Fentanyl poisoning than are killed in the Ukraine war. Do American lives not matter? Where is the billions of dollars for cleaning up the drugs brought in because of the open border policy? We deserve, but do not receive truth or straight answers from our government

There is no pursuit of happiness when survival is the priority. Every day there is more to show Patriots how helpless and hopeless the future is. The media lies, the government gaslights and wastes more money. Our stability weakens by the minute, and we are forced to abide human trafficking. Children are being tortured and pedophiles are ecstatic at the government support they have at all levels. Public schools are fighting for the right to corrupt children. Teachers feel compelled to go beyond their duties to sexualize children.

I had a close encounter with a man and his teenage accomplice coming for my granddaughter in a Michael's store. I was aware of the older man following us, but I only noticed his accomplice when they were about to make their move because the store had very few shoppers. It was a close encounter and I am grateful that I am always hyper alert and cautious. It's a far cry from the world I grew up in and the stress is always present.

I, like tax paying voters, am tired of this substandard government running ram shod over our constitution, our economy and our right to live without fear and then receiving no support from the people we pay to serve us. The high standards that made our country great no longer exist.

Over a period of 1.5 years, I became convinced that our country is being systematically destroyed by a corrupt government and we are forced to not only pay for the destruction, but also to watch the country we love be destroyed.

I no longer trust our justice system, the health care system, educational system or the government. I believe Greg Abbott could have shut down illegal entries into this country by the authority given in Article 4 Section 4 of the Constitution. This invasion must stop and people be sent back to their own countries.

Karen Hoffman

Signature

Karen Hoffman

Printed Name, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME ON THE 27th **DAY OF SEPTEMBER, 2023.**

Notary Public, State of Texas

MAYRA MEDINA
Notary Public, State of Texas
Comm. Expires 06-10-2025
Notary ID 133150784

County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Lloyd L. Davis, who being duly sworn stated as follows:

My name is Lloyd Davis. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
I have resided in Kinney County my entire life with only brief absences, and for the last 44 years.
The border crisis is a dire emergency. As an owner of private property, we are subjected to trespassing, dangerous vehicle pursuits on a weekly, sometimes daily basis. We have suffered substantial damages to fences, gates and rangeland by human smugglers/traffickers and persons here illegally on our roadways and ranches. I cannot even estimate how many trespassers we do not see in both in daylight and the dark of night who travel on foot and are not detected. We do, however, find evidence of their presence from loads of trash left behind, walking trails and trampled fences and gates.

I have experienced trespassing on my ranch and a ranch I lease at least 9 different times where vehicles are driven through the fence and abandoned or fences are purposely cut. These purposeful drive through events not only severely damage fences which must be repaired immediately to keep livestock in, but the damaged vehicles leave behind plastic and metal car parts and glass which must be removed to prevent livestock from chewing on them and dying of "hardware disease." On one occasion, I received a cali at 10:00 pm on a Friday night that my cattle were on the highway. I immediately went to the area to secure the livestock and found that trespassers had cut open the fence to provide easy passage to the highway to be picked up by smugglers leaving their shiny new wire cutters behind. I had to secure the fence for the night and return the next morning to make permanent repairs which took several hours. Such repairs for labor and materials on numerous occasions have cost me several thousand dollars.
Furthermore, I have spent hours collecting many pickup truck loads of trash left behind apparently by large groups of illegals including large backpacks, black plastic sheeting, clothing, shoes, water bottles, cans, bottles and the like before they are transported to their destinations. This process is laborious and very unsanitary but the trash must be removed to protect livestock and our private land. I would guess that more than 95% of illegals entering our property are males.

Due to the illegal traffic and trespassers, we are fearful each time we leave our property that individuals or groups might break into our home. We no longer feel safe in our own home. When our dog barks at night we fear trespassers might be near. My wife is very anxious. We are forced to carry firearms to protect ourselves when driving on the ranch and working outside.

Living in a remote area, Operation Lone Star has provided us with at least a small sense of security in knowing that law enforcement officers are available to come to our assistance as they are usually patrolling the roads in our area. They cannot be everywhere all the time but we feel their presence is important and necessary in protecting us and our property. Without Operation Lone Star, the area where we live would likely be totally open to massive illegal and criminal activity.

Signature

Lloyd L Davis
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 27 day of September 2023.

Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Laura Allen, who being duly sworn stated as follows:

1. My name is Laura Allen. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Val Verde County for a period of 50 years.

I currently reside on a family ranch that has been in the family more than 100 years and is more than 15,000 acres. We sit between US Highway 90, the Amistad National Recreation area (including the Rio Grande River on our West side), and the railroad runs through our property. Through four generations we have seen many changes in illegal immigration. In the past two and a half years the influx of immigrants through our land has increased significantly along with damages and criminal presence.

Our livestock have been killed due to fences that have been cut on roadways and the railroad. It is a daily task to repair holes to the cost of tens of thousands of dollars for fencing, wire, and livestock losses monthly.

Our family has had to significantly alter our lifestyle to ensure our safety. Teenage children are no longer allowed to travel around the ranch without an adult accompanying them for fear that they may encounter an armed illegal alien. We have had multiple encounters with illegal aliens that were almost argumentative in nature. We have captured photographs of illegal aliens traveling through our property carrying long rifles. Our family adults and employees rarely travel our property alone and never without a weapon.

We have had multiple car chases through our property. The most recent occurred early this month. Two cartel members were arrested hauling 6 illegal aliens, one of whom was a convicted sex offender. Others have been caught with drugs and various criminal records. Of all the illegal aliens that have been caught on our property, and those that we have been able to detect through game cameras and sightings, almost all of them are adult males dressed in full camouflage and carrying backpacks.

We have developed a great relationship with the Border Patrol agents that are allowed to work on our property when they aren't kept inside the station to process. May agents have expressed their frustration with their inability to properly do their jobs because of administrative changes in Washington. Without Border Patrol present on our property, the only assistance we have available to us is local law enforcement that is overburdened. Our county is approximately 3000 sqaure miles and our Sheriff's office is located at the southern portion of that. On a good day, they simply do not have the personnel available to cover the entire county. Were it not for Operation Lonestar and all the personnel that have been sent to our border, we could have gone significant amounts of time without any law enforcement presence. I fear that many more people could have been hurt or killed.

Laura Allen
Signature
LAURA ALLEN
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 28 day of September 2023.
Nicole M. Mata
Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

Mr. Brent Smith
Kinnney County Attorneys Office
Brackettville, Texas

09/18/23

Mr. Smith,

I understand that your Office would like my statement as to the hardships and danger incurred by myself and my family from the result of the ongoing border emergency crisis. The following is that statement.

This all started when the Federal Government effectively opened up the Border for anyone to illegally enter Texas and the United States during the current administration. My Ranch is four miles East of Brackettville, along Hwy 90, in Kinney County Texas which is directly in the path of both foot and vehicle smuggling routes from the Mexican Border 30 miles away. Illegals daily either cross my Ranch or destroy my property with vehicles while being pursued by Law Enforcement. I have had dozens of foot pursuits across my Ranch and it is very unnerving to be sitting reading a book at night and see a helicopter light up your home looking for illegals they are pursuing. It has progressed to the point that we hear the helicopter on regular occasions and have a pistol laying on the coffee table at night before going to bed to protect ourselves.

I cannot begin to explain the damage done by the illegals, as I have had my fence cut dozens of times and have had drivers of human smuggling vehicles drive through my fence on numerous occasions to the point my fence along Hwy 90 is in need of replacing. I have no one to help me with repairs and I am 66 years old, It is tough when it is 110 degree and you and your wife have to repair 100' of fence that has been destroyed as helicopters and officers with dogs are searching. It has progressed to the point that I cannot let my Grandchildren fish, hunt or explore the Ranch without someone being with them for the chance that they happen upon a group of Smugglers. I myself have helped injured illegals who I have found on my property in need of medical attention. When I called to report this Kinney County had no one to send and Border Patrol said they did not either. After the 3rd call to Border Patrol and an hour later an officer arrived to take the subject for medical attention.

We regularly find holes in the fence, water valves shut or broken, water tanks drained and gates left open. These actions make it necessary to drive the ranch daily to check so that livestock is not without water and that fences can be repaired and the whole time being armed. While on Vacation recently my home camera picked up a male subject peering into my home and after that he broke into a storage building and took several items after ransacking the area. When called, as before, Law Enforcement had no one to send and I had to get a neighbor to check on our ranch. These actions have forced us to keep all doors locked, at all times, install security systems, arm ourselves and keep all vehicles locked inside barns, including tractors and motorized equipment, used on the Ranch.

To close, I feel that the Federal Government has forsaken us, giving in to greed and votes. The County and State Law Enforcement are doing everything possible but have been overburdened as they have taken up the role of the Border Patrol, while the Border Patrol are overwhelmed processing illegals and releasing them into Texas. We need help from someone that cares about the citizens of Texas. It is sure not the Federal Government.



Les Meyer, Resident of Kinney County, Texas

County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared
LES MEYER, who being duly sworn stated as follows:

1. My name is LES MEYER I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of 27 years.

L Ey
Signature

Les Meyer
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the ___ day of September 2023.

Gene C Slate
Notary Public, State of Texas

GENE C SLATE
Notary ID #12384797
My Commission Expires
July 2, 2025

County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Rhonda Marquardt, who being duly sworn stated as follows:

1. My name is _____. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of 21 years.

I moved to Kinney County in 2002. Things here were quiet peaceful and laid back. That all started to change in 2020. It started getting worse in January of 2020. This illegal, international invasion has been going on since then. It continues to get worse.

We never feel truly safe anymore. I have had two occurances of people coming up to my car wanting rides to San Antonio. One at Dollar General in the parking lot in 2021. The other at Subway in June 2023. We live on a ranch. Many times BP, DPS, or the Sheiffs are on our ranch looking for illegals with dogs, helicopters, or on foot. Due to this, we never go anywhere alone or without a gun. We have started working together all the time. This has changed our jobs a great deal.

We have also had our freedom reduced. Due to safety measures we can't stay nights away from home. We used to travel a great deal and would go separately if we wanted to. Not anymore. We feel we must constantly defend our property.

Rhonda Marquardt
Signature

Rhonda Marquardt
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 18 day of September 2023.

Nicole M Mata
Notary Public, State of Texas

NICOLE M. MATA
[illegible] 13920645
Expires February 10, 2025

County of Brooks §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Urbino Martinez, who being duly sworn stated as follows:

1. My name is Urbino Martinez. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.

I have been the Brooks County Sheriff since 2017, and I was the chief deputy from 2009-2016.
Since January of 2009 through present, Brooks County Sheriff Office has recovered nine hundred fifty-six (956) undocumented crossers who have perished in the harsh ranch land terrain. We estimate that we recover less than half of all those who perish, which constitutes a health crisis.

United States Highway 281 is part of the Gulf Coast corridor, which is one of the most active drug and human smuggling corridors in the United States. The Falfurrias checkpoint is one of the busiest checkpoints in the southwest corridor in regards to undocumented crosser apprehensions and narcotic seizures.

Because of Brooks County's geographical location and the Border Patrol checkpoint, it has its own very unique challenges. In most cases, smugglers/coyotes drop off undocumented crossers. They are led by the smugglers and made to walk east and west of United States Highway 281, moving north through private ranch lands, to then get picked up on Texas Highway 285 and other roads by other smugglers who will then transport them on the Gulf Coast corridor to cities north. In other cases, local gang members or others seeking financial gain, who live in the county, drive their human and drug loads through private property by cutting locks and fences.
This year we've had 90 911 calls, 999 rescues, 30 smuggling pursuits, 25 bailouts, 23 vehicle checkpoint circumventions, 32 stolen vehicles, 37 gang members, and 93 smuggling cases. It is currently costing the county $4,000 a week on fuel, patrolling for illegal traffic. We also help our landowners by repairing damaged fences, which averages approximately $600 for 100 feet of barbed wired fencing, and into the thousands for net and high fence wire.

The Mexican cartels and the transnational and statewide gangs continue to increase the level of organized criminal activity in the Rio Grande Valley and

throughout the state. We, who live in and near border communities where cartel drug and human smuggling operations are prevalent, face additional public safety issues such as felony vehicle evasions; pseudo police stop; extortion, sexual assaults of illegal aliens. The gangs and cartels have contributed to the deaths of undocumented crossers on Texas ranches and farms.

Brooks County is a small rural area with limited resources. It is home to a United States Border Patrol Checkpoint, located on I-69 West corridor thirteen (13) miles south of our county seat, Falfurrias, Texas. Brooks County, which consists of an estimated population of 7,976, comprises 943 square miles of land mass. United States Highway 281 (I-69 West) is a major artery from the Rio Grande Valley area and leads to Houston and San Antonio, Texas, and other destinations leading to the interior of the United States. Corridor II is the heaviest Alien and Narcotics Smuggling corridor used in South Texas. The apprehensions and seizures along this corridor are among the highest in the country and the Falfurrias Checkpoint is the busiest checkpoint in the country in regard to alien apprehensions and narcotic seizures.

As added information, from 2009 through fiscal year 2013 the County incurred the added burden of six hundred and twenty-eight thousand, one hundred seventy-two dollars and ninety-three cents ($628,172.93) for the cost of recovering and processing dead bodies.

Signature

Urbino Martinez
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 26 day of September 2023.

Notary Public, State of Texas

LETICIA VELA DAVILA
NOTARY PUBLIC
STATE OF TEXAS
ID# 123944893
EXPIRES 5-18-2024

County of Kinney §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Sharon Watson Melton, who being duly sworn stated as follows:

My name is Sharon Watson Melton. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.

I have resided in Kinney County for a period of 35 years. My husband and I ranched for about 25 years on the West Prong of the Nueces River. We knew small groups of illegals came through our ranch on foot, but they did no damage. They had a trail past the hunter's cabin and would sometimes spend the night as the cabin was unlocked.

We now live outside of the city limits of Brackettville in Kinney County, across from the school track field on RR 334. Our compound has several cabins, a barn, pens, and kennels for dogs. The mules and goats are in the pasture.

Over several years, the encounters have increased until it's daily. At first it was just clothing or trash left in the pasture while they waited to be picked up on 334. My first face to face encounter was in 2021. A woman and young men walked to my house at day light asking for water and to charge their phone. I called the Sheriff's Office. We signed the paperwork for trespassing. Three more men were found in the pasture. There was a vehicle driven past our house, stopped at the gate to the pasture and five men bailed out. Deputies caught them as they climbed the gate.

The next encounter was with about five deputies' trucks in our yard with lights flashing looking for a large group that were on foot in our pasture. They were not all apprehended. The helicopter continued to fly. The dogs were barking at night, so I got up and looked outside. There was a man by our barn. The next morning a Galveston Constable said it wasn't him. He went to a clump of trees by 334 and picked up several men who were waiting for their ride. Ten men were found where I had been finding clothes in about October of 2021.

In 2021 while we were away, there was a bail out on 334 that went through our fence. Our neighbor put in a cattle panel until we got home and paid a man $100 to fix the fence.

In May of 2022, a van came down lane off 334 passed the house, drove through the fence right before our gate, took out fence and then into the pasture through the fence into Mr. Louis pasture. Continued then through the fence into solar panel. There was a big storm with high winds and heavy rain. I was told there were 8 children, a baby, a woman, and several men. The helicopter had to come down because of the storm.

Our most recent was July 22, 2023. A vehicle came off Highway 90 into Lone Mt, through 3 other fences and down an easement for power line on to our pasture on the backside. They messed up several gates, fences, and a huge 8-foot double gate into our pasture. After several yards they broke through the fence into Hobbs's pasture onto his gate that's on 334. He was not caught. The next week, he was picked up in Spofford with a load.

There are frequent high-speed chases past our entrance and sometimes the road is spiked in front of our entrance. This is at the track and there are families and children there. This is very dangerous as they park on both sides of 334.

Signature

Sharon Melton
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 22 day of September 2023.

Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

County of Freestone §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Marsha Morgan, who being duly sworn stated as follows:

1. My name is Marsha Morgan. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have ~~resided~~ owned property in Val Verde County for a period of 16 years.

Signature

Marsha Morgan
Printed Name, Affiant

KRISTI HARRIS
Notary Public, State of Texas
Comm. Expires 02/25/2024
Notary ID 12639954-7

SWORN TO AND SUBSCRIBED before me on the 27th day of September 2023.

Kristi Harris
Notary Public, State of Texas

September 26, 2023

My family and I have owned property in Val Verde County for the past 16 years. Our property in Del Rio on the Rio Grande, had always been our peaceful family get away spot up until Biden took office and the Border Crisis began. Nowadays it is no longer peaceful, we now go to Del Rio to repair fence, make sure our home is intact and make sure illegals are not congregating in our yard. We were unaware of the situation at our property up until May of 2021, when my husband noticed photos of our property on social media. Once we caught wind of what was taking place, we made the drive to Del Rio, to find that the illegals were using our ramp that goes down to the river to cross and enter the United States directly onto our property. We arrived to find our fences stomped down to the ground, our grass completely gone in our yard due to the high foot traffic across our property, and masses of immigrants were crossing the river directly behind our property at specific intervals of the day. We would typically see the large groups around 8:00 A.M. and 4:00 P.M. and a handful would cross throughout the night. My husband and I were steadily back and forth to Del Rio from May 2021 through September 2022, during this period our fences were constantly needing repair, heaps of discarded clothing, trash, and pills littered our property and we were constantly having to pick these items up. Feces and feminine products were scattered across our property. On September 18, 2021 I had the opportunity to go downstream from our home on a jet boat and witness the invasion of the Haitian group, this was something that I will never forget. Seeing this mass of people was absolutely unbelievable, children running naked, they were all bathing in the river, and they were crossing back and forth going to Mexico for food. It was something unlike anything I had ever seen nor anything I would have ever expected to see occurring in the United States. It seemed as if I was in a third world country. I have seen women of all ages sitting in tears behind our home and was told that it was suspected that they had been raped. I've seen elderly people barely make it across the river. I have seen a child that was swept away down river from the man he crossed with. I've seen hungry children and children being physically drug across the river in a lethargic state. These children appeared to have been trafficked and I reported what I saw in hopes of helping at least the children that I noticed, that just didn't seem to match the typical family units. What we as property owners are having to endure is something you would never expect in the United States. I would estimate the expenses that we have accrued due to this illegal invasion, to be around the $12,000 mark. We purchased horse panels and installed them along our back fence, to prohibit climbing over our fence. My husband welded pipe and panels around our ramp into the river on June 5, 2022 when it was 108 degrees, because our son asked us not demolish our ramp, because he had such fond memories of that ramp throughout his childhood. We have purchased overpriced hotel rooms, because we did not feel safe staying at our own property. I would say that 65 percent of the illegals that I saw cross at our property have been male, the majority coming from Venezuela. Even had one male dressed as a woman, he was a Mexican National who crossed and was attempting to burn our house down with molotov cocktails. He managed to burn and destroy our huge cottonwood tree that was is in our back yard and he burned a few vacant lots next to us, which took down much of the cane growing along the river. The burning of the cane actually ended up being beneficial for apprehension of the illegals. Luckily this person was taken down by law enforcement before he made it to our house to

carry out his plan. I've been very thankful that Operation Lone Star has been in effect and for the various branches of law enforcement that have been around our property. I know without their assistance, we would not currently have a house on the river. With law enforcement help and since we enclosed our ramp, the traffic has dramatically slowed in our area over the past year, but I know they are still coming and are just crossing elsewhere. This past month I have had neighbors informing me that they are starting to see small groups in our area once again and that crime is picking up along the river on Vega Verde Road. I've also been told this past week neighbors are seeing larger groups once again, it sounds like things are definitely picking back up in our neighborhood. We will be making the drive next week to verify and check on our property. These illegals have taken away our once peaceful river property. I would have never believed that American citizens would be living out this nightmare. I feel this is definitely an emergency and our government needs to take every step to put a stop to this disaster. We as a country will not be able to support this influx of people and all of the benefits that they are receiving. For the past 2 summers, I have read about water shortages across the country, we have lack of housing, power grid issues, hospitals with room shortages, how will allowing millions of illegals to enter our country help with these issues that we know we are already facing? We may very well begin to see food shortages, these illegals are tapping into our resources and this matter should be our country's first and foremost priority!



Marsha Morgan

519 Vega Verde Road

Del Rio, Texas 78840

County of Kinney §

State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Dennette Orwig, who being duly sworn stated as follows:

1. My name is Dennette Orwig. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.

2. I have resided in Kinney County for a period of 35 years.

My family has ranched in Kinney County since 1987. In 1988, I left my banking career to help run the ranch. Living on the ranch, I never felt afraid for my safety until the surge of immigrants started flooding across the border. Undocumented workers had always crossed our land looking for work. For generations, my family has feed hungry men crossing the border looking for a better life. However, the people crossing the border today are very different. They don't respect us or our property.

We have had to change our operation significantly because our fences are cut, and gates are left open making a breeding program impossible.

In July 2021, several men and women walked by our house and were setting under our barn. They wanted to charge their phone and food. We didn't know they had opened the door.

to our ranch truck letting our two dogs jump in the truck. When we took them food and water, they never told us they locked our dogs in a hot truck. We finally found our dogs dead in the back seat of our truck.

We have a ranch house that has been broken into several times. Game cameras are stolen. The fences have been cut. Our ranch hand is afraid and often wants to quit because of the number of people crossing the border.

In July, we started finding gates open. One open gate let horses out into a corn field, luckily, we found them before they foundered on the corn.

For the past 35 years I have lived close to the border. I speak Spanish and have always worked closely with our men, many of them recent immigrants from Mexico. Living near the border had never been a problem. January 2021 everything changes. We now live in fear. The numbers and types of people crossing our land has shattered our lives and livelihood.

Signature

Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 25 day of September 2023.

Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

County of Denton §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Melinda Preston, who being duly sworn stated as follows:

1. My name is Melinda Preston. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Denton County for a period of 20 years.

My husband and I went to Eagle Pass on January 19-22, 2023. We could not believe what we saw and the testimonies we heard. We saw busses filled with illegals that had crossed over the Rio Grande into America. There is so much damage to the land where they are crossing and they have caused so much damage to residence properties. We stayed on a ranch and the stories of families being abused and nothing being done about it, was shocking. The border patrol shared stories of dead bodies that they have to fish out of the water. We went back to Eagle Pass, Del Rio, and Bracketville on August 28-29 and nothing has changed. Please protect our citizens and close the border.

Melinda Preston
Signature

Melinda Preston
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 26th day of September 2023.

Joy Alice Preston
Notary Public, State of Texas

Joy Preston

Joy Alice Preston
My Commission Expires
2/1/2027
Notary ID 10489094

County of Kinney §
State of Texas § **AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared Tiffani Sanchez, who being duly sworn stated as follows:

1. My name is Tiffani Sanchez. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in KINNEY County for a period of 25 years.

On Thursday September 21, 2023, my five-year-old son found two male illegals hiding in our yard. These illegals were part of a bailout that had occurred three blocks from our home that afternoon around 3:40. When we made contact with them, they asked if we could allow them to keep hiding in our yard. They stated that they had already been hiding in my yard for over an hour. I instructed them to get out of my property and explained that I was calling the sheriff's office. It was a scary situation to have my child find illegals in our yard. A place where he is supposed to be safe. My son explained to me how the illegals instructed him to stay quiet by placing their finger over their mouth and saying shhh. I contacted the sheriff's office, but the individuals escaped and weren't found. Later that night around 10 o'clock the two male individuals came back to my home, rang the doorbell and asked for help. This time around there was no longer just two there was a total of five male individuals. They were all dressed in black, and one had a bag pack. The individual who rang my doorbell explained that he was the individual that was there earlier in the afternoon. I instructed them to leave my property and that the sheriff's office was on their way. They insisted that I assist them. They stated they needed help. I repeated myself to them that they need to go. They walked off and a block down the street they were picked up by a sheriff deputy. I had never felt so unsafe in my home. My kids were scared to sleep in their own room. They were afraid that someone else would come into our yard and maybe try to get into our house. This border crisis is no joke. It is getting out of hand. It is sad to know that we can't feel safe or comfortable in our own home. We have bought a handgun to keep in our home in case something happens. I have never been someone to want a gun for protection, but with this border crisis I feel like I need it to protect myself, my kids and my home. Chases happen daily in our small town. I live a block from a ranch road where there are always

bailouts. I have to constantly look over my shoulder and make sure no one is around. I hope one day this town can be what it once was, a quiet peaceful town where we all once felt safe.

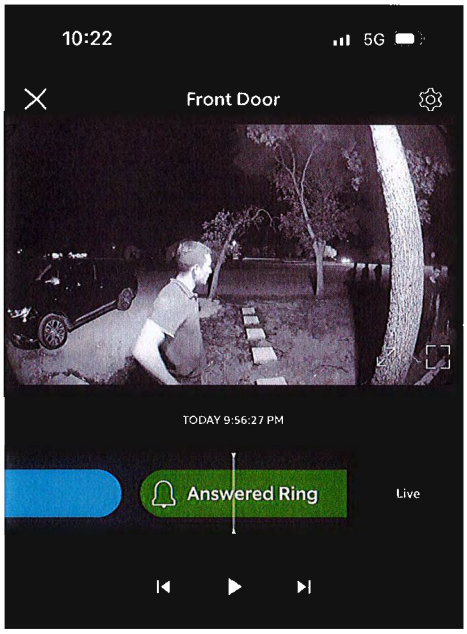
Tiffani Sanchez
Signature

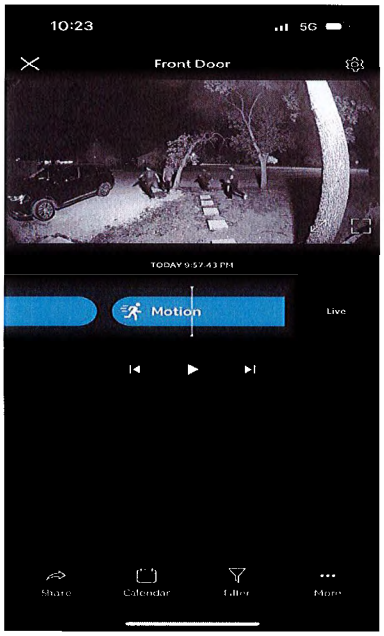
Tiffani Sanchez
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 27 day of September 2023.

Nicole M Mata
Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025


10:22
5G
Front Door
TODAY 9:56:27 PM
Answered Ring
Live


10:23
5G
Front Door
TODAY 9:57:43 PM
Motion
Live
Share
Calendar
Filter
More

Robert L. Trant
P.O. Box 1388
Brackettville, Texas 78832

Date: September 24, 2023

As a rancher in Kinney County, trespassing illegal aliens cost $1000's of dollars for:

Fences cut or pushed down and gates left open from illegal trespassers.
Interior fences run through from fleeing vehicles driving across the ranch.
Perimeter fences/gates run through by fleeing vehicles and bailouts.
All inside pasture gates must be locked so livestock does not get mixed up.
Vehicles, ATV's, heavy equipment stolen and driven over gates/fences.
Houses, cabins, trailers, RV's broken into and damaged.
Freezers robbed, left open, damaged.
Food stolen, discarded, damaged.
Deer Leases have been cancelled and devalued.
Land values have suffered.

Maintenance/monitoring costs for fifty miles of fence line, livestock, and water have increased by the 1000's of dollars for labor, materials, fuel, tires, wear and tear on equipment/vehicles/animals for:

Driving/Riding fifty plus miles of fence at least three times a week looking for breaks.
Repairing damaged fences and gates on a continuous basis.
Rounding up and sorting livestock that are in places they should not be, often resulting in dead livestock shut off from water/feed or shade, or injury on public roadways.
Checking water troughs for: damage, drained or overflowing, tainted water from bathing.
Checking water storage tanks for: damage to stand pipes, holes, being empty or too full.
Checking pipelines for breaks and holes drilled with pocket knives.
Checking pumps for damage to wiring, being turned on or off from what they should be.
Picking up trash and discarded items that are unsanitary, unsightly, and dangerous to livestock that will eat them: clothes/shoes, water bottles, food containers, back backs, etc.

How would you like to have somebody tear your yard fence down, break in and ransack your home, and then steal your vehicle to leave with? My closest neighbor is 1 ¾ miles from me and there are no public roads through the ranch. Should I even need to lock my house or vehicle or worry about my personal safety under normal circumstances….NO! BUT I DO!

98 % of the illegal aliens trespassing on the ranch are males. I run for exercise two or three times a week and have to carry a gun and my phone. If I walk more than twenty feet from my vehicle while on the ranch, I have to lock it and make sure my gun is on me at all times. All of this out in the middle of nowhere…this is unsustainable and ridiculous! Complete B.S.

R.L. Bret Trant



County of Maverick §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Luis Manuel Valderama, who being duly sworn stated as follows:

1. My name is Luis Manuel Valderama. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.

2. I have resided in Maverick County for a period of 20 years.

I own a ranch, 350 acres along the Rio Grande River. My physical address is 6787 HWY 277 North, Eagle Pass, Texas. We have owned the ranch since 2003. I live on the ranch with my wife, Isela Valderrama. I began work with the Border Patrol in 1985 and was stationed in Eagle Pass and Carrizo Springs, Texas. I retired in 2017 from Customs and Border Protection, Office of Professional Responsibility. I have seen many different trends at different times. From Amnesty in 1986 when illegal aliens were attempting to enter the U.S. and immediately claim they had been in the U.S. for many years in order to make fraudulent claims to residency requirements. In 2000, we had record numbers of arrests. One noticeable trend was the size of groups. We would encounter 100+ crossers at a time. Something seen in California but never in Eagle Pass, Texas. Our narcotics seizures were also historically numbers. Multiple loads per shift with records being beat often. There were other trends but the common denominator at that time was Border Patrol was

still in the field chasing drugs smugglers and illegal aliens the entire time. We caught what we could and processed for removal. Deadlines had to be met and a critical deadline was since we were not detention facilities, we could not hold aliens for more than 72 hours (Reno v Flores Decision).

Today, or rather since Biden was elected the numbers of aliens crossing illegally into the U.S. is incredible. Along my fence line, Border Patrol has placed placards with arrows directing aliens to pick up sites for transport. The groups at the peak were groups of 700. The trash left behind has been awful. These aliens are looking for Border Patrol to surrender and be processed so they can continue their trek north. The other side of the coin is that aliens under Title 42 (no longer in place) would not turn themselves in so they would not be returned to Mexico. These aliens, hundreds each day, would cross my property, cutting my fence in order to pass through my property. Border Patrol has been busy transporting and processing the surrender aliens and no longer patrolling the border. Game cameras from Department of Public Safety document the aliens attempting to avoid detection. Who are these alien? Could they have criminal histories that would subject them to criminal prosecution? Breitbart.com, a news agency, reported one alien who was released killed a resident recently.

Thank goodness for Governor Abbott. He brought the National Guard to keep watch on the Border. I am no longer alone on my ranch chasing aliens by myself. Texas National Guard would call me to seek permission to chase illegals on my property. If not for them the aliens would be undetected. When I observed

groups crossing, I would call the Border Patrol who did not have anyone who could respond. If I caught aliens, they would not respond immediately, and I would hold them for an hour or longer.

The perimeter fence of my property has been destroyed. Aliens cutting the fence. I was approved for a $40K grant to repair the fence but the office wanted it repaired immediately and replacing a fence to have it cut the next day did not make fiscal sense. I would also have to pay for the repair to later be reimbursed. The grant did not cover all the labor to replace. I have an estimate from a fence company for $70K. I bring this up because my ranch is located on HWY 277. My cattle have escaped the ranch through the holes cut by aliens. Although insured, an accident would most definitely subject me to a lawsuit. I have almost considered selling my cattle because of this issue. I have to check my fence every day. During a visit to California, a neighbor reported my cows out. I returned in time to gather 20 outside my ranch before they could reach the highway. I am constantly dealing with issues because of this influx of people who trespass on my property and cause damage. I have provided pictures of the events on my property and damage that has been caused and these photographs are true and accurate reflections of what is portrayed in them.

Signature

Luis M. Villarreal

Printed Name, Affiant

JACQUELINE REYNA NOTARY PUBLIC STATE OF TEXAS ID# 128527245 EXPIRES 8-13-2026

SWORN TO AND SUBSCRIBED before me on the 27 day of September 2023.

Notary Public, State of Texas

County of Tom Green §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Walter Hadley Wardlaw, who being duly sworn stated as follows:

1. My name is Walter Hadley Wardlaw. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
2. I have resided in Kinney County for a period of 70 years.

I have had multiple events involving endangerment of people and property since the Biden administration opened the border.

1) The fences and gates on my property in Kinney Co. have been cut multiple times or run thru. There have been multiple bailouts on FM674. I have not received any reimbursement for damages.

2) One group of approximately 6 illegal males slept in my barn. They caused me to lose 150 bales of hay, by leaving the door open and cows entering. The illegals left trash behind.

3) I had a man working for me in ValVerde Co jumped by illegals at gunpoint. They threatened him as they were carrying drugs.

4) Hunters cabins have been broken into. Their property stolen and destroyed.

5) In general we do not feel safe on our own property. Hunters have had blinds entered. I have installed an expensive security system at my home. My family no longer feels safe fishing on the creek or leaving the house without a gun. This fear from illegals on American owned property has to stop!

Walter Hadley Wardlaw
Signature

WALTER HADLEY WARDLAW
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 19 day of September 2023.

Brenda D. Gonzalez
Notary Public, State of Texas

BRENDA D. GONZALEZ
Notary Public, State of Texas
Comm. Expires 02-03-2026
Notary ID 132908601

County of Sutton §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared W. L. Whitehead, who being duly sworn stated as follows:

My name is W.L. Whitehead am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit. I have resided in Sutton County for a period of 62 years.

(TYPE YOUR STATEMENT HERE)

We do have a critical emergency on the Border - our hands are tied - we cannot manage or limit the overwhelming number of illegals crossing into our country. It is Dangerous - it is a Disaster - for Texas, as well as the entire Nation! The issues listed below barely touch the tip of the iceberg in the ever-escalating crisis:
1. very large & organized human trafficking & drugs cartels operating within our borders -
2. millions of illegals entering the US without proper medical screening - opening the door to many new & dangerous diseases from all over the world - Many buses pass through our part of the state using our public restrooms for bathing & changing clothes - spreading sickness & filth.
3. bankrupting our town & cities being forced to furnish food, clothing, medical care, living expenses & transportation -
4. costing our state & national government billions of dollars for calling in the services of all law enforcement agencies, taking them away from protecting their usual areas to watch the Border. We have counted over 40 DPS cars staying in Sonora's local motels on a single day - driving over 200 miles a day, back & forth from this lodging to the Border - even more miles if they are traveling to El Paso or Laredo.
5. allowing thousands of illegals with known criminal records to be free to travel anywhere they please within the US.
6. high speed vehicle chases on all roads & highways within at least a hundred-mile radius of the Border. There have been disastrous wrecks with several fatalities stemming from these incidents. We have witnessed them.
7. the constant destruction of property on our ranches - They run through our fences on the highway & run over the gates. It costs at least $5.50 to build one linear foot of new fence - even more expensive to make repairs.
8. the threat of losing our hunters - Economically, we depend heavily on hunting income & the situation is negatively impacting our leasing program. Hunters are finding their trailers & hunting structures beginning ransacked, electrical appliances being left running & bathrooms being trashed. All this adds excessive expense to the leases.
9. our personal & personnel safety is being threatened - game cams pick up men in camo walking near ranch houses carrying guns. We feel we must stay on high alert at all times to stay safe. We feel helpless & are fearful for the future of our properties & our lives. Operation Lonestar has been the only assistance offered for protection against this horrible Disaster.

W. L. Whitehead
Signature

W. L. Whitehead
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 28 day of September 2023.

Patti Prather
Notary Public, State of Texas

NOTARY PUBLIC STATE OF TEXAS
PATTI PRATHER
Notary ID # 355289-0
My Commission Expires
April 21, 2027

September 27, 2023

To Whom It May Concern:

WE DO HAVE A CRITICAL EMERGENCY on the Border - our hands are tied – we cannot manage or limit the overwhelming number of illegals crossing into our country. This loss of control causes us grave concern and should be considered very Dangerous to Texans, as well as the rest of the nation. The list of issues below barely touches the tip of the iceberg in this ever-growing Crisis:

1. very large & organized human trafficking & drug smuggling cartels operating inside our country. Their network is far-reaching and well-connected. We live on a farm to market road in Sutton County, over 100 miles from the Border. Over the last few months, we have had local law enforcement & DPS troopers stopping several suspicious vehicles on our road, within 100 yards of our home. All detainees have been young men from San Antonio, Dallas & Houston, driving rental vehicles, and are 'scouting' for better concealed routes to move their 'cargo' farther north to the larger cities. We are often awakened in the early hours of the morning with loud vehicles racing towards I-10 – they usually choose the weekend when the authorities are tied up on the larger highways & many miles away.

2. allowing persons to enter without proper medical testing, opening the door to many new & dangerous diseases from countries all over the world. Many of the buses pass through our area & the illegals use the restrooms to bathe & change clothes – definitely spreading filth & contagion.

3. bankrupting the towns & cities forced to furnish total care (food, medical, living & transportation costs). Most Border towns and surrounding towns are already on a tight budget, w/ a depressed economy – they can't make up this drain & certainly can't raise taxes.

4. costing our state & government billions of dollars for necessitating the services of our DPS, Border Patrol, local law agencies, Texas Rangers, National Guardsmen, etc. while taking them away from their intended jobs and disrupting the protection of our state & our nation. Our communities have been left with decreased & limited law enforcement since so many personnel have been ordered to stage on the Border. We have counted over 40 DPS cars staying at local motels on a single day, traveling over 100 miles back & forth (or even more if going to Eagle Pass or El Paso) to work each day on the Border.

5. allowing thousands of people with known criminal records into the country.

6. high speed vehicle chases on almost all roads/highways within a hundred-mile radius of the border. We have witnessed several 'bail-outs' inside our city limits as vehicles are trying to escape pursuit. You have heard about the 2 women killed in Ozona in the center of town. Highway 277 from Del Rio is routed through Sonora & is only a couple of blocks from our school system. One bail-out happened in our neighbor's front yard, right next to our rent house. The truck (w/ 8 people) ran into a large tree – 1 was killed & several injured – all within walking distance of school. This is a very common occurrence. Some of these people escape inside the city limits and are never apprehended. This leaves a deep sense of fear throughout the community. This is a very usual occurrence, also.

7. the constant destruction of property on our ranches. We ranch in Val Verde, Edwards & Sutton counties. Highway 277 runs through the middle of the Val Verde & Edwards properties. Vehicles are constantly running through locked gates and through new fences. One foot of new fence line construction in our rocky terrain runs at least $5.50 per linear foot – repairing damaged fences costs

even much more than that. We have found electric pumps burned out where illegals have attempted to charge cell phones. They have taken floats off water troughs. That drains the reservoir tank is just a few hours. It is difficult to refill a tank with weak water wells & the cost to pump water is expensive.

8. the threat of losing our hunters. Economically, we depend heavily on hunting income & the situation is negatively impacting our leasing program. Travel trailers & hunting structures are being ransacked, electrical appliances & air conditioners left running, and bathrooms misused. This is disconcerting & discouraging, as well as, expensive & frightening to the hunters. We cannot negotiate for the better lease prices under these conditions.

9. personal & personnel safety. There are footprints and all kinds of trash left along trails where illegals travel through the pastures on foot. Our ranch hands are forced to work in pairs to have any sense of being safe. Everyone is urged to be safely inside the house with all doors locked after dark. Game cams have shown men in camo dress carrying rifles near one of the ranch houses in Val Verde County. We feel we must maintain a constant state of vigilance to be aware & safe.

We have lived on these ranches our entire lives and have never experienced this sense of utter helplessness and fear for the future of our livelihood and our properties, the welfare of our children, our future communities and the state of our nation. Operation Lone Star should not be discontinued because we need all the assistance we can get to protect us from this horrible Disaster.

Respectfully submitted,

W L Whitehead

W. L. Whitehead

Sonora, Texas

County of Sutton §
State of Texas §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared W.L. Whitehead, who being duly sworn stated as follows:

My name is W.L. Whitehead I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit. I have resided in Sutton County for a period of 63 years.

(TYPE YOUR STATEMENT HERE)

W. L. Whitehead
Signature

W.L. Whitehead
Printed Name, Affiant

SWORN TO AND SUBSCRIBED before me on the 28 day of September 2023.

Patti Prather
Notary Public, State of Texas

PATTI PRATHER
Notary ID # 355289-0
My Commission Expires
April 21, 2027

AFFIDAVIT

County of Kinney
State of Texas

Before me, the undersigned authority, personally appeared Zachry H Davis, who being duly sworn stated as follows:

My name is Zachry H Davis. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.
I have resided in Kinney County for a period of 70 years.

I, Zachry H Davis, have ranched and farmed in Kinney County for the past forty years. We have never experienced the illegal alien traffic like we have in the past 2 ½ years transversing our property and being very destructive especially to our fences, gates, and living structures --- they drive through our fences destroying them and through our gates without opening and thus totally destroying them; we have encountered large groups (20 or more) of foot traffic primarily being young males. These events have caused us to change our daily patterns of ranching----- we carry firearms for our protection; we are very cautious about all our activities due to fear of encounters with foot traffic and/or vehicular travel all of which have illegally entered our private property. This environmental impact has become a disaster for our operation and our county with total disrespect for our private property rights. Without the help of Border Patrol Agents and Operation Lone Star it would not be possible or even safe to continue our agricultural operation occupation !!

Zachry H Davis, Affiant

SWORN TO AND SUBSCRIBED before me on the 26 day of September 2023.

Notary Public, State of Texas

NICOLE M. MATA
My Notary ID # 130920645
Expires February 16, 2025

Mr. ROY. I thank the Chairman.

Chairman ARRINGTON. I thank the gentleman from Texas, and now yield five minutes to the gentleman from Georgia, Mr. Buddy Carter.

Mr. CARTER. Thank you, Mr. Chairman, and thank all of you for being here, and thank you for your expertise and your interest in what I consider to be one of the most pressing problems that we have in our country today and that is the border situation at the southwest border and the porous border.

Look, I have been in Congress for ten years. I have been to the border eight times in that ten years that I have been a Member of Congress. The last time was about two months ago. It is in as bad of shape now as I have ever seen it in the eight times that I have been there.

I am a pharmacist by profession, so I am obviously concerned about the number of immigrants who are coming across that border, but I am also concerned, and even probably more concerned, about the illegal drugs coming across that border, particularly fentanyl, fentanyl that is poisoning our communities.

You know, every day we lose over 200 people as a result of fentanyl poisoning. I want to share a story with you real quick. As I said, I am a pharmacist, a health care professional, and I embarrassed myself at a town hall meeting one day, and I was embarrassed to have made the mistake I made. I referred to it as fentanyl addiction, and a mother stood up and she said, no, sir, you are wrong. It is not addiction. She said, my son took one pill and he is dead. It is fentanyl poisoning, and that is exactly what it is.

We have made some progress in some of the tools in our tool chest. I led a letter to the FDA asking them to reclassify naloxone to where you could get it without a prescription. Now, I am often critical of the FDA, for good reason I think, but I have to applaud them in this case, because they did just that. I keep naloxone with me. I keep it in my backpack everywhere I go. Thank God I have never had to use it, but I know that it is there if I ever have to use it.

We all know the statistics. Since President Biden took office, over 60,000 pounds of fentanyl have been intercepted at our borders. That is what has been intercepted. We have no idea what has gone through those borders without us knowing it. In fact, I will tell you, I mentioned the last time I was at the border, the Border Patrol agents told me two things that I didn't know before. First of all, the number of non-Mexicans crossing that border now exceeds the number of Mexicans crossing that border. Secondly, and this is what disturbed me the most, the street price of fentanyl has plummeted. It has gone from $10 a tablet down to 25 and 35 cents a tablet, which is simple economics. That is supply and demand. The demand is still there, but the supply of fentanyl on the streets right now is so high that the price has plummeted.

This is a national emergency. This is something we have got to address and save Americans, 200 every day, and everyone here, everyone in this room knows someone who's been impacted by this. Either you have a family member or you know of someone who's been impacted by this. That is what has really got me concerned.

Ms. Kirchner, I want to ask you, given your experience with DHS and with the Border Patrol, how has current border policies contributed to the rise in fentanyl trafficking and drug trafficking as a whole?

Ms. KIRCHNER. Well, sir, the Biden Administration has focused very heavily on releasing illegal migrants and that has driven this mass wave of immigration through Central America, through Mexico, but what is coming with it? I mean, all of these people are paying cartels and they are all paying cartels and their cartels are becoming richer and richer, and we know that the cartels use human beings to divert resources so that they can bring in their shipments in other areas of the border. So, it is interesting you asked that question because when I first started working on immigration over 20 years ago, I had border agents tell me, no, the two are separate. Smuggling aliens is different than drug trafficking and they were very different, and now it is all combined. It is one big, lucrative, illegal, toxic operation and we are paying the price as Americans.

Mr. CARTER. Thank you for that. Let me move on. Mr. Blair, I want to ask you, we know that on the Federal side we spend roughly a billion dollars a year incarcerating illegal immigrants. Do you know how much money the State of Texas and its localities spend on the same issue? Any idea?

Mr. BLAIR. Sir, I do not. I can find out for you, but I do not know that number.

Mr. CARTER. I appreciate that. Let me ask you, Mr. Smith, has the increase in drug smuggling impacted the public safety of your community?

Mr. SMITH. It has. You know, the amount of law enforcement it takes to respond to incidents.

Mr. CARTER. And I suspect emergency personnel carry naloxone with them and they have to use it quite often. It is not inexpensive.

Mr. SMITH. Absolutely. Absolutely.

Mr. CARTER. Mr. Chairman, I can't thank all of you enough for being here, and thank you, Mr. Chairman, for holding this hearing because this is a national emergency. You know, if we had a plane crash today and it killed 200 people, we'd stop every airplane that was flying in this country until we figured out what went wrong. Yet we lose 200 people every day to fentanyl poisoning and what happens? Nothing whatsoever.

Mr. Chairman, I yield back.

Chairman ARRINGTON. I thank the gentleman from Georgia. I thank the patience and contributions of our witnesses. In conclusion, I would like to make a couple of brief comments and I will try not to give another speech.

When I think about this administration and what is emblematic of this administration with respect to immigration enforcement and border security, I think about Ms. Kamala Harris, our Vice President. She was designated as the border's czar. She was in charge for the Administration, and I remember her as a presidential candidate along with the other Democrat presidential candidates, when asked the question about the current border situation, she, along with every Democrat candidate raised their hand when asked should we decriminalize border crossings? She also raised her hand along with the others when asked if we should provide, "free serv-

ices." They are not free, but should we provide health care? And she raised her hand. It is like the maxim your granddad taught you growing up: when people tell you who they are, believe them, and I believe they are, for whatever reason and rationale, for an open border. I think the greatest cost of that is much deeper and more profound than just the financial cost, the dollars and cents, no question about it, and I won't go through the litany of things associated with those costs because I am trying my best to stay focused on the Budget Committee's jurisdiction with respect to the financial impact.

I put a premium on freedom. I know Cato puts a premium on freedom. I think the fact that the United States has put a premium on freedom is the reason that you see unlocked and unleashed human potential like no other country in the history of humanity, but what I would say to my guests, Mr. Bier especially, if you are not enforcing the laws, and this President has not done that willfully, intentionally, systematically, if he has not done all that he can do, and, in fact, I think he has undone things with respect to it, but if he is not doing everything he can do to provide for a common defense and secure our sovereign border, there is no freedom.

Rule of law is essential and security is essential to the freedom and quality of lives of the American people, and yes, there were problems with our border and with immigration enforcement before this President, and yes, both sides of the aisle will have to come together to fix some of these deficiencies in our current immigration system, but the crisis today, the lawlessness and chaos at our border is different than anything we have experienced and it could have been avoided. It is self-inflicted, and it is actually one of the reasons why it is very difficult to have a bipartisan, productive conversation to reach some good outcomes that would, in fact, make the system work better. So I think that that is a big observation of mine because I, too, am a champion for freedom.

But what is happening in Kinney County? If you asked how freedom is working out for the citizens of—my fellow Texans in Kinney County and 253 of the other counties in Texas, they would say there is no American freedom the way we knew it before. They don't go to their ranches anymore, and they don't leave their kids and their wives at the ranch anymore. They are fearful of their lives. That isn't the American way. That isn't liberty as we have held it out to the rest of the world.

But yes, legal immigration, good. Labor shortage, hardworking, God-fearing, freedom-loving people from all over the world coming for a slice of the American dream, you better believe it. That is the American story. It really is. All I would say is I welcome those folks and I would be in their shoes, fighting tooth and nail to get to this country, this experiment in liberty and democracy, but I only welcome them if they respect our laws, the safety of our citizens, and the sovereignty of our country, and that is our constitutional, sacred duty.

And in this hearing, we are just trying to identify the financial cost, and it is real, and for a Federal Government that prints money and borrows money without any thought, it is hard to suggest that there is a consequence to anything we do. Funding foreign countries' security, funding expansions of health care. I mean,

as long as there is no immediate consequence or you are not taking tax dollars out of their pocket or cutting someone's favorite program, it is just such an irrational system up here.

The best way, I think, to look at a rational system and observe what it is doing is to look at those places around the country, which is every place but the Federal Government, where they have to actually balance their books. They have to make the ledger balance. So they either raise taxes or cut expenditures to absorb the cost. Man, that is why people are yelling from the rooftops, help us, we are overwhelmed and we are overrun, because they don't say that in this town as long as China and other bondholders will say, here is some more money for this insatiable appetite to spend.

I appreciate you, Mr. Bier, and I appreciate your testimony and I appreciate your back and forth, and I always appreciate my colleagues on both sides having a good, robust, productive conversation.

Mr. Smith, thanks for making the trip up here from Kinney County. Tell my friends out there hello.

Mr. Blair, thanks for your service to our country.

Ms. Kirchner, thank you for all the work that you all did as the basis for our discussion in terms of the financial cost of our open border and this border crisis.

With that, God bless you all and God bless our great country. We are adjourned.

Oh, let me just say this. Sorry. I am going to also submit, if I can, since I have adjourned, but I want to submit a letter of support from Sheena Rodriguez, president of Alliance for a Safe Texas, and then another study from the Federation for American Immigration Reform that has formed the basis again of today's hearing, and I obviously don't object and I so order.

[The information follows:]

Honorable Members of the Committee on the Budget

Hearing on *The Cost of the Border Crisis*

May 7th, 2024

Distinguished members of the Committee, I write to you on behalf of myself, a resident of Tarrant County, TX, and as President of Alliance for a Safe Texas.

Since the onset of the current administration, Texas has continued to be at the forefront of the open assault against the sovereignty of our state and the nation resulting from the continuous border crisis. However, in the face of these challenges, the State Legislature and Governor Greg Abbott have not faltered. They have been proactive, taking unprecedented actions to mitigate the damages inflicted on our state and citizens as a direct consequence of the unmitigated failures under the current administration.

Despite the immense challenges posed by the border crisis, Texans have shown remarkable resilience. From the border security efforts of Operation Lone Star (OLS), the expansion of OLS task forces across the state, to reimbursing property owners for the damages resulting from smuggling efforts by cartel operatives and doing the work federal agencies should be doing, the negative impacts thrust upon the shoulders of Texans are nearly impossible to quantify. Put into context, Texas has spent $11.6 billion of our citizens tax dollars in just over four years, a cost more than most state budgets and more than allotments for border security under the Trump administration.[1]

Below is a mere snapshot of the various ways and perspectives in which Texas and the U.S. continue to be negatively impacted by the ongoing border crisis.

Increase in Trafficking

Texas is one of the leading states in the U.S. for human trafficking cases. In January 2024 alone, the Texas Department of Public Safety (TXDPS) and partners conducted 12 operations resulting in the rescue of over 50 victims, including 9 minors.[2] Yet, despite this well-known fact, the current administration continues to disregard the safety and wellbeing of Texans by facilitating and allowing the most unprecedented border security and immigration disaster in our country's history. Houston, Dallas/Fort Worth, and San Antonio lead the state in documented human trafficking cases.[3]

Simultaneously, these areas are amongst the highest where the most vulnerable population in this border debacle, unaccompanied minors (or unaccompanied alien children (UAC)), are released to poorly vetted sponsors, causing concerns about the increased probability of trafficking.[4] Under the Biden Administration, 59,437 UACs have been released to sponsors residing in Texas according to ORR.[5] The releases of unaccompanied minors in Texas far outnumber those seen in any other state. An astonishing 65% of the UACs released into Texas since Fiscal Year (FY) 2015 has occurred under the Biden administration.[6]

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[1] Bethany Blankley. The Center Square. "Operation Lone Star border security funding totals more than multiple state budgets." Apr. 10, 2024. https://www.thecentersquare.com/texas/article_9ea49eee-c76f-11ee-b9ed-5b9573aa2815.html

[2] Texas Department of Public Safety. Last accessed May 5, 2024. https://www.dps.texas.gov/news/dps-announces-results-human-trafficking-operations

[3] Natalie Haddard. WFAA. "Dallas, Houston and San Antonio lead in human trafficking cases in Texas." July 17, 2023. https://www.wfaa.com/article/news/local/texas-cities-lead-human-trafficking-cases/287-417f66c4-0784-4a65-bd7c-ad0f7e22aa8d

[4] Bethany Blankley. The Center Square. "Report: Federal agencies not safeguarding unaccompanied minors: Texas group calls on state Legislature to investigate." Apr. 16, 2024. https://www.thecentersquare.com/texas/article_56f1affe-fc12-11ee-93c2-a3d5bc90e229.html

[5] The Department of Health and Human Services. Last accessed May 4, 2024. https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state

[6] Ibid.

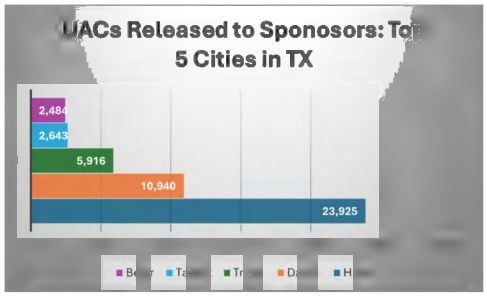


Chart: Alliance for a Safe Texas **Source: HHS**

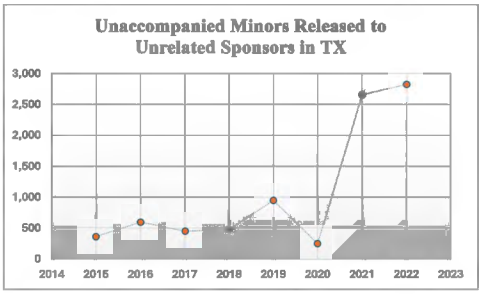


Chart: Alliance for a Safe Texas **Source: New York Times, HHS**

In Tarrant, 2,643 unaccompanied minors from 25 different countries were released to sponsors residing in the county since FY 2021.[7] Simultaneously, using the data obtained by the New York Times[8] from HHS, Alliance for a Safe Texas has identified the number of UACs in Tarrant County who were released to sponsors other than the minors' parents. Comparing the data to previous fiscal years, the number of UACs released to sponsors who were not the child's parent has risen alarmingly high under the current administration.

As documented cases of child trafficking have increased nationwide, the current administration has allowed the release of tens of thousands of unaccompanied minors to inadequately vetted sponsors, most of whom are not their parents, in the metroplex areas of the state, which are experiencing the highest levels of known trafficking cases.

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[7] Hannah Drier. *HHS-child-migrant-data*. New York Times. Last accessed May 5, 2024. https://github.com/nytimes/hhs-child-migrant-data
[8] Ibid.

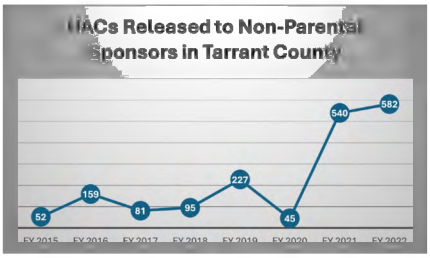


Chart: Alliance for a Safe Texas **Source: New York Times, HHS Data**

The soul-crushing and dehumanizing cost of trafficking has negative impacts on the victims, families, and communities that could never be quantified. Yet this Administration has only codified dangerous relaxed policies[9] that I believe only incentivize and expand the exploitation of vulnerable migrant children with the use of American taxpayer dollars. Sadly, Texas is the epicenter, placing further financial strain on law enforcement and non-profit anti-trafficking groups.

If the intentional neglect by any American parent resulted in the harming of their child or the child they are charged to care for; the federal and state governments are obligated to intervene for the best interest and wellbeing of the child. Many American children are forced out of their homes, and parental rights are stripped away from citizens as child protective agencies with little credible evidence proving abuse or neglect often intervene to the detriment of the children, parents, and communities.

Yet, despite years of overwhelming documented evidence of abuses and trafficking directly resulting from the relaxed policies set forth by DHS, HHS, and ORR, these agencies are continuously rewarded by Congress with billions in additional funding, contracts, and raises, such as that recently signed off by congressional members for the director of ORR[10].

Furthermore, despite years of allegations of abuse, neglect, and disregard of federal immigration laws, many non-governmental organizations (NGOs) continue to receive unprecedented amounts in no-bid contracts, grants, and awards funded by taxpayer dollars with no oversight, transparency, or culpability to Congress or the American people.[11]

Instead of further funding the abuse and trafficking of children from other countries, Congress should hold HHS, DHS, ORR, and contracting organizations accountable by ceasing funding until agency heads and organization leaders are thoroughly investigated for their role in facilitating the handing over of children to the doorsteps of their abusers. Additionally, Congress needs to make necessary changes to federal laws to force transparency of the agencies and contracted affiliates and ensure accountability measures are passed to implement now and in the future.

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[9] National Archives Federal Register: A rule by the Children and Families Administration. April 30, 2024. https://www.federalregister.gov/documents/2024/04/30/2024-08329/unaccompanied-children-program-foundational-rule#:~:text=The%20TVPRA%20states%20further%20that,child%20is%20an%20unaccompanied%20child

[10] Blankley, B. The Center Square. "45 Republicans vote against defunding ORR head salary over missing children, abuse allegations." Nov. 16, 2023. https://www.thecentersquare.com/national/article_77afeda8-84cd-11ee-9b3b-cfbfe9db98ec.html

[11] Sheena Rodriguez. Alliance for a Safe Texas. *The need for state regulation and oversight of facilities housing minors in Texas.* Nov. 2023. https://securetheborder.us/research-publications

Impact on Schools in Texas & the U.S.

As an unaccompanied minor, by definition, each of these children is allegedly of school age. The average cost for a single public-school student in Texas, according to an analysis by Austin American-Statesman for the 2023-2024 school year, was $10,387.[12] The estimated cost of a single year of education for the over 59,000 UACs released across Texas since fiscal 2021 using the information from the analysis is estimated to be over $617 million. This is in addition to and does not include the number of illegal migrant families that have settled into the state and whose children are entered into the school system.

Moreover, the financial burden to U.S. taxpayers was recently outlined in a report detailing the estimated calculations of just the 2021-2022 school year, costing roughly $59 billion, in addition to the not classified estimated expense of LEP students costing an additional $16.9 billion.[13]

Impact on Healthcare Systems in Texas & the U.S.

Since 2021, Texas healthcare systems have been overwhelmed by the influx of illegal migrants, straining hospitals, particularly in rural areas already struggling to keep their doors open. The costs of treatment are often not paid by the illegal alien population; therefore, the financial responsibility is pushed onto the shoulders of the taxpayers. The Florida State Legislature recently added a provision to documentation on taxpayer-funded medical programs indicating if a patient is an American citizen or illegally present. **Congress should consider implementing similar provisions to taxpayer-funded federal health care programs to quantify the financial costs to taxpayers better.**

The first report which released the documented responses estimated the burden on taxpayers as $68 million during the first three months of the bill's implementation, with $275 million projected for the year[14] in addition to the $340 million spent in 2021.[15] Additionally, the Centers for Medicare and Medicaid Services identified the costs of healthcare for migrants to U.S. taxpayers as $7 billion in fiscal 2021 and $5.4 billion in fiscal 2022, "with migrants receiving at least $8 billion in improper Medicaid payouts (10% of the nation's total of $80 billion)," according to the Center Square.[16]

However, it is not just the financial costs Americans must endure regarding health care but also the impacts on accessibility to the services and care our tax dollars pay for. For example, in rural communities along the border, EMS services are frequently consumed with treating illegal migrant injuries caused by abuses endured along the route to the U.S., smuggling attempts, and bailouts, leaving local citizens without access to lifesaving services their tax dollars fund.[17]

Further Strain on Texas Communities

Under the current administration, large and small NGO facilities housing unaccompanied minors in rural areas of Texas raised concerns for local officials regarding the potential negative impacts on the already

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[12] Keri Heath & Bayliss Wagner. Austin American-Statesman. "Analysis: Texas schools facing lowest inflation-adjusted state, local funding since 2020." Feb. 5, 2024. https://www.statesman.com/story/news/education/2024/02/05/education-texas-public-school-funding-lowest-inflation-adjusted-state-local-since-2020/72154083007/

[13] Steve Wilson. The Center Square. "Report: Border crisis could cost U.S. taxpayers $451 billion." Nov. 13, 2023. https://www.thecentersquare.com/national/article_26583728-826e-11ee-ac63-eb1a26b4f9db.html

[14] State of Florida Twenty-First Statewide Grand Jury: 6th Presentation. Mar. 6, 2024. https://www.flgov.com/wp-content/uploads/2024/03/6th-Presentment-of-the-Twenty-First-Statewide-Grand-Jury.pdf

[15] Blankley, B. The Center Square. "Hospital costs for foreign national illegally in Florida total $340M in fiscal '21." Feb. 24, 2023. https://www.thecentersquare.com/florida/article_fbabd6e2-b478-11ed-94fe-d7d488134de8.html

[16] Wilson, S. The Center Square. "Report: Border crisis could cost U.S. taxpayers $451 billion." Nov. 13, 2023. https://www.thecentersquare.com/national/article_26583728-826e-11ee-ac63-eb1a26b4f9db.html

[17] Blankley, B. The Center Square. "Texas sheriff: County 'under siege' with escalating border crisis." Mar. 16, 2023. https://www.thecentersquare.com/texas/article_353cc59e-c3f4-11ed-8618-0384acb9b925.html

strained local healthcare services from El Paso[18] to Pecos[19] and beyond. Additionally, city officials in Pecos cited significant losses of staff to critical staff members and cited lost revenue of over $300,000 in HOT funds as a direct result of the ORR facility.[20]

Furthermore, during the pandemic, sick illegal border crossers were sent by federal agencies into Texas metroplex hospitals for treatments, causing reported infection rates in those respective areas to soar.[21] The inflated data included the vast number of transported ill migrants and was counted as a significant factor in determining lockdown responses, which prompted reactionary policies and ordinances hindering the lives of millions of Texans, their businesses, schools, and daily lives: a consequence which can never be truly quantified.[22]

Impacts on Tarrant County

Last month, my county Sheriff, Bill Waybourn, testified to a House Oversight and Accountability subcommittee regarding the impact on public safety of the ongoing border crisis in Tarrant County. Located in North Texas, Tarrant is the third largest populated county in the state, with more than 2.2 million residents. It is also the county I call home. According to the Sheriff, numerous criminal illegal aliens currently being held in the county jail cost taxpayers roughly $24,000 per day, with the average stay reported as 145 days.[23]

The list of 178 alleged crimes committed by the 264 jail mates provided by Waybourn's testimony included: 8 charges of murder, 44 cases of aggravated sexual assault of a child, and 3 charges of kidnapping with a deadly weapon.[24]

Cartel operatives and affiliated gang activities continue to plague the county, including stash houses and human and drug trafficking. According to the Sheriff, in a recent stash house bust, cages were found in the home where women were kept until their debt was paid. Tarrant County averages 15 fentanyl overdoses per day and a death occurring every 36 hours.[25] County jail mental health officials are attributing the "strong availability of drugs" as the culprit for skyrocketing mental health cases found in county inmates.[26]

Also incurred to Tarrant County taxpayers is the cost of UACs released into our communities and presumably entering our local school districts. As previously mentioned, according to HHS, my county has absorbed 2,643 unaccompanied minors since FY 2021. The cost to local and state taxpayers' using the previously mentioned analysis amounts to $10,387 per student per year; the estimated cost of a single

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[18] Amna Nawaz & Phil Maravilla. PBS. "Inside the El Paso medical clinics struggling to care for influx of migrants." May 29, 2023. https://www.pbs.org/newshour/show/inside-the-el-paso-medical-clinics-struggling-to-care-for-influx-of-migrants

[19] Rachel Ripp. NewsWest 9. "Pecos residents say migrants coming could put a strain on local resources." Mar. 22, 2021. https://www.newswest9.com/article/news/local/pecos-residents-say-migrants-coming-could-put-a-strain-on-local-resources/513-54fe1633-16e2-437a-98c7-9e8604cd79d1

[20] Rodriguez, S. Alliance for a Safe Texas. *The need for state regulation and oversight of facilities housing minors in Texas*. Nov. 2023. https://securetheborder.us/research-publications

[21] Emily Crane. New York Post. "Illegal immigrants being sent to major Texas cities without COVID tests." Aug. 12, 2021. https://nypost.com/2021/08/12/migrants-being-sent-to-major-texas-cities-without-covid-tests/

[22] Rodriguez, S. Alliance for a Safe Texas. *The need for state regulation and oversight of facilities housing minors in Texas*. Nov. 2023. https://securetheborder.us/research-publications

[23] U.S. House of Representatives. Committee on Oversight and Accountability: National Security, the Border, and Foreign Affairs subcommittee. Testimony by Sheriff Bill Waybourn. *How the Border Crisis Impacts Public Safety."* Apr. 16, 2024. https://oversight.house.gov/hearing/how-the-border-crisis-impacts-public-safety/

[24] Ibid.

[25] Ibid.

[26] Ibid.

year of education for the UACs released under the Biden Administration in my county is over $27 million.

Congressional Members must Respond

Despite the ingrown resiliency of the Lone Star state, Texas' resources are spread thin. Our state foster care, hospital and healthcare systems are overwhelmed. Shortages of manpower across Texas law enforcement agencies continue as labor and human trafficking cases spike. Meanwhile, the current administration continues to fail to uphold its constitutional duties to protect the sovereign state of Texas and the nation with its harmful border security and immigration policies. When the federal government intentionally fails to uphold its responsibilities to the American people, the Constitution, and the laws it has sworn to defend and protect, the states are forced to do all they can to fill those deficiencies.

How long must Texas and American citizens be forced to shoulder the burden of responsibility and costs designated to the federal government? How much more death and financial burden is acceptable before Congress decides to address the true "root causes" of this border crisis, which are the federal policies implemented under the Biden administration. **Congress must respond with appropriate actions and shut down the border by cutting funding to the very agencies allowing for the border crisis to continue.**

While Veterans are denied health care, American public schools and child protective services continue to fail American children and families, law enforcement agencies across the country lack funding and manpower, critical infrastructure is crumbling, and homelessness, especially among our veteran population, continues to spike; surely Congress could find better ways to spend nearly half a trillion of taxpayer funds that would actually benefit Americans rather than allow the continuation of unrestrained illegal immigration jeopardizing the security of our nation. **Congress should support and pass with haste legislation proposed by Congressman Roger Williams, which would reimburse Texas for the expenses of OLS and allow us to continue to do what the current administration refuses to do to the best of our ability: secure the border.**[27]

I am thankful for the Texas state legislature, Governor Greg Abbott, and Texas law enforcement agencies' continued efforts to deter and decrease the negative impacts on our communities. While the financial burden resulting from the current administration's intentional dereliction of duty is far too great, I fear that the actual cost of human lives lost, women and children exploited, and the overwhelming financial burden on taxpayers, law enforcement agencies, schools, and other social networks will be felt for years to come and remain remarkably unquantifiable.

Thank you, Honorable members of the committee, for your time and consideration in addressing these pressing issues.

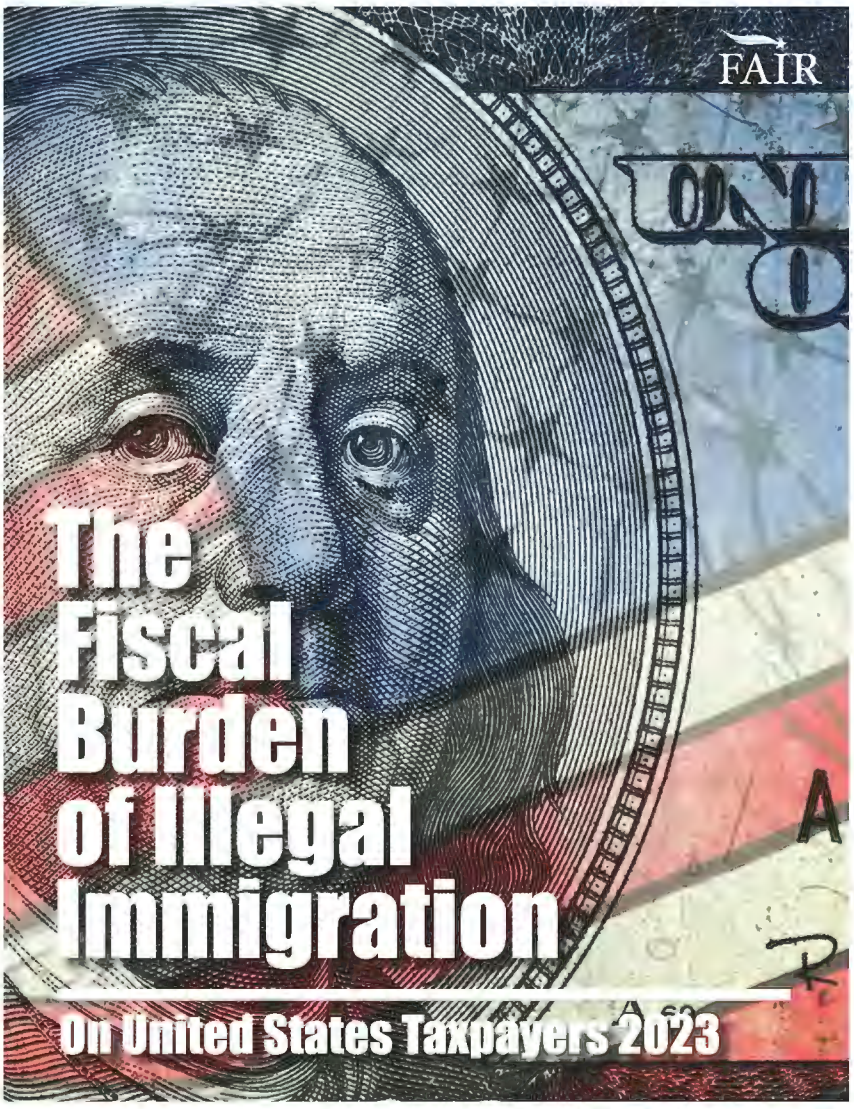
Sincerely,

Sheena Rodriguez

Resident of Tarrant County, TX & Alliance for a Safe Texas, President
Contact: sheena.rodriguez@securetheborder.us

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[27] Blankley, B. The Center Square. "Bill would require feds to reimburse Texas for border security costs." Feb. 21, 2024. https://www.thecentersquare.com/texas/article_58b3fd86-d0bd-11ee-9536-cb8a40e6ee29.html


FAIR
The Fiscal Burden of Illegal Immigration
On United States Taxpayers 2023

The Fiscal Burden of Illegal Immigration

On United States Taxpayers 2023

A FEDERATION FOR AMERICAN IMMIGRATION REFORM RESEARCH REPORT

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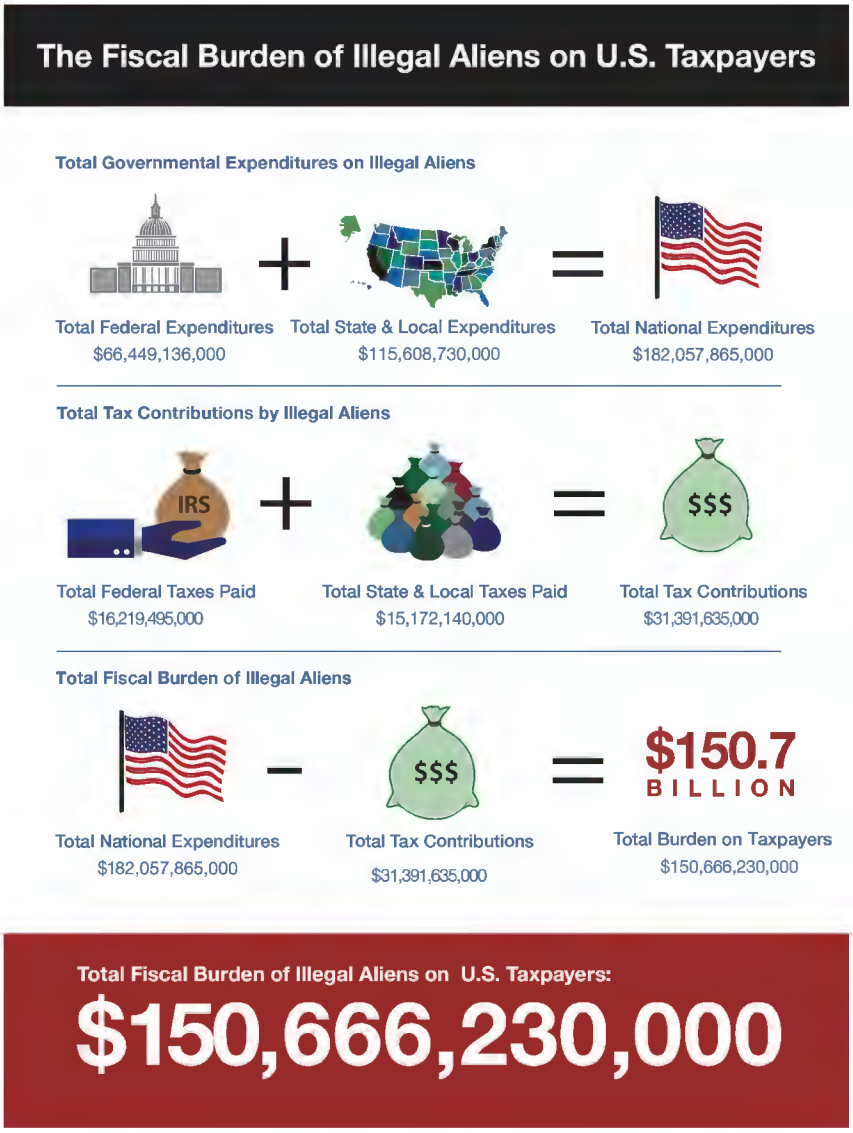
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Total Federal Expenditures
$66,449,136,000
Total State & Local Expenditures
$115,608,730,000
Total National Expenditures
$182,057,865,000
Total Tax Contributions by Illegal Aliens
IRS
Total Federal Taxes Paid
$16,219,495,000
Total State & Local Taxes Paid
$15,172,140,000
$$$
Total Tax Contributions
$31,391,635,000
Total Fiscal Burden of Illegal Aliens
Total National Expenditures
$182,057,865,000
$$$
Total Tax Contributions
$31,391,635,000
$150.7
BILLION
Total Burden on Taxpayers
$150,666,230,000
Total Fiscal Burden of Illegal Aliens on U.S. Taxpayers:
$150,666,230,000

Introduction

This report is currently the only comprehensive examination of the financial impact of illegal immigration in the United States. Every day, hundreds of millions of dollars in American taxpayer money are spent on costs directly associated with illegal immigration. Only a small fraction of these costs is ever recouped from taxes paid by illegal aliens, with the rest falling on the shoulders of American citizens and legal immigrants.

Our aim in this report is to show the American people the fiscal burden of illegal immigration at every level and across nearly all aspects of life. These costs range from emergency medical care to in-state tuition; from incarcerating illegal aliens in local jails to federal budgets that pay out billions in welfare every year. Because there are so many different ways that money is spent on illegal aliens at both the state and local levels, the information in our report is otherwise hard to find (or even intentionally hidden). This report supersedes FAIR's 2017 cost study[1] and highlights massive increases in spending related to illegal immigration that were implemented while American citizens deal with an uncertain economy.

Why does this matter?

Put simply, almost all expenses associated with illegal immigration are preventable. Illegal immigration's annual net burden on the economy, now more than $150 billion, is greater than the annual GDP output of 15 U.S states.[2] There is a strong correlation between the security of America's borders and the rate at which the cost of illegal immigration increases. With proper border controls and the enforcement of laws already on the books, the cost of illegal immigration would be greatly reduced.

The period since FAIR's last fiscal burden study in 2017 has not been easy for the American people. A global pandemic and economic disruptions have drastically raised the prices of necessary goods and services, and has contracted the jobs market so that many citizens remain without gainful employment. Because these factors are also global, the U.S. remains a magnet for foreign nationals who wish to compete for the jobs and benefits that American citizens rely on. While millions of Americans are struggling to put food on the table and hold gainful employment, we believe they deserve to know where their federal, state, and local tax dollars are going.

Overview

This report examines the annual fiscal impact of illegal aliens on at both the federal and state levels. FAIR used the most recent data available and accounted for new programs and legislative/policy developments up to the end of 2022. Significant temporary spending related to illegal immigration, like aid programs during the COVID-19 pandemic, also took place during the study period. While we do highlight COVID-related costs, they are not included in our overall totals because of their temporary nature, and this report strives to paint a picture of more static costs.

This project contains extensive analysis of both federal and state/local spending on many fronts, reflecting the nationwide scope of illegal immigration. From public schooling and postsecondary education programs, to welfare and healthcare costs, we account for as many known costs as possible. This wide scope is important, as the highest costs often occur outside of traditional illegal alien destinations.[3]

In total, the gross cost of illegal immigration now total $183 billion, up more than 35.7 percent since 2017. The cost incurred per illegal alien (including their U.S.-born children) has increased as well, now totaling $8,776 annually.

Because this report covers the full fiscal impact of illegal immigration, it also includes the contributions of illegal aliens to the economy. These include tax payments made directly to state and local jurisdictions, the federal government, as well as excise, property, and sales taxes. However, these receipts fall far short of covering the expenses incurred due to illegal immigration. Taxes paid by illegal immigrants only covered around 17.2 percent of the costs they created for American citizens.

When the taxes paid by illegal aliens are factored in, the net cost of illegal immigration to U.S. taxpayers is now $150.7 billion. This means that each American taxpayer shells out a net average of $956 (or $1,156 before the taxes paid by illegal aliens are factored in) due to illegal immigration.[4]

What's Changed

Since our 2017 report, the immigration landscape has shifted significantly. The Trump administration engaged in an aggressive approach towards combatting illegal immigration, which increased spending on security but also tempered the growth of other federal expenses tied to illegal immigration. However, even this slower growth was offset by an increase in states expanding programs available to illegal aliens like in-state tuition and certain medical benefits. In many cases, these expansions were a reaction to those administration policies, but they have continued to broaden in scope under the Biden administration.

Currently, under the Biden administration, the U.S. is experiencing a full-fledged migration crisis. The

illegal alien population is expanding rapidly after drastic cutbacks to border security, with monthly encounters hitting all-time highs. The administration is now attempting to redirect additional border security funding to expand migrant processing initiatives that have, so far, only spurred additional illegal immigration. Another new program is set to allow tens of thousands of illegal aliens to fly directly into the United States monthly under "humanitarian parole."

This self-imposed crisis is only driving the costs associated with illegal immigration even higher. States like Texas and Arizona have been forced to spend huge sums to compensate for reduced federal law enforcement presence on the border. Meanwhile, the federal government and states like California and New York alike are increasing illegal alien access to taxpayer-funded benefits.[5] Various policy shifts have made it harder to obtain data on these increases in spending from the federal government, but FAIR has exhaustively analyzed the effects of our ongoing illegal migration crisis in this report. The net result has been a sharp increase in the fiscal costs of illegal immigration under the Biden administration that shows no signs of slowing down.

A Note on the Lack of Transparency in Government Data Reporting

Information transparency is essential to good governance. It encourages a well-informed citizenry to hold their elected officials responsible and motivates those officials to implement policies that benefit their constituents instead of special interest groups. Furthermore, citizens have the right to know pertinent information, presented in a clear and comprehensible manner, on issues that impact them. Unfortunately, there is a concerning lack of transparency and openness when it comes to the issue of illegal immigration.

While preparing this study, we often had to grapple with a paucity of easily accessible official data. Many state and federal entities do not publish detailed data that they collect, making it difficult to reliably separate illegal aliens from citizens or lawful immigrants in many of the fields covered in this report. We have also encountered cases where the current administration has revoked or restricted documents published by previous administrations in order to reduce the visibility of data which shines a negative light on their immigration policy agenda. Extremely helpful publications like the Alien Incarceration Report, which documented foreign criminals in custody in the United States, are no longer updated under the Biden administration. This kind of subtle de facto censorship is highly unethical and does not serve the interests of the American public.

Thankfully, we were able to find most of the necessary information to complete this study by analyzing existing databases and publications from the federal and state/local governments as well as other reputable organizations and academic institutions. However, as is noted throughout this report, there were a few instances where we were unable to obtain enough data to make reliable estimates. For

example, illegal immigration imposes a significant direct cost on the United States in the form of gang-related crime and trafficking of drugs and humans, but thanks to jurisdictional differences and "sanctuary" policies that protect criminal illegal aliens in many states or localities, this cost often remains a "known unknown." For other topics, like post-secondary education, we had to stitch sources together and create new methodologies in order to calculate our estimates because, while the relevant data is tracked, it is fragmented across different sources.

So, why are Americans being kept in the dark? Primarily because the political and ideological influence of the open-borders lobby, both within and outside the federal government, holds significant sway over the Biden administration and many state governments. This "hear nothing, see nothing, say nothing" attitude is rooted in the hope that if the American public doesn't have easy access to valid information regarding the impacts of illegal immigration, they will accept the lie that no problem exists.

In carrying out this study, FAIR is advancing the belief that the American people have a right to transparent and accurate information so that they are fully informed of what is occurring in their country and how much it costs them.

Summary of Methodology

FAIR made every effort to source the data in this report from government agencies and testimony from government officials, using these as the foundation of our estimates. When official data is unclear or unavailable, FAIR looked to research generated by credible, non-partisan organizations and academic institutions. On the rare occasions that a calculation must be estimated and/or assumed, we offer a detailed reasoning for the estimation so that readers can examine the relevant information and judge our conclusions for themselves. For the sake of maximum accuracy, we have noted various areas where we believe it is impossible to estimate a cost.

Throughout this study, we have taken caution to never overestimate totals, and have chosen to err on the lower side of cost estimates, and the higher side of tax contributions, when our calculations resulted in a range instead of a static figure. We do this to ensure that our cost figures do not extend beyond what the evidence can empirically prove. Combining this with the fact that there are some costs that cannot be reliably estimated, it can be safely assumed that the actual cost of illegal immigration is considerably higher than the final tally offered here. Given current trends – rapidly increasing illegal immigration, increased federal and state government spending, inflation, and the fact that numerous state benefits are set for expansion to unauthorized migrants – the fiscal burden of illegal immigration is sure to grow even higher in the near future.

Every effort was made to find and utilize the most recent data available as a basis for calculations; thus, the majority of the data is drawn from sources covering between fiscal years (FY) 2020 and 2022. However, the COVID-19 pandemic, and the massive government spending binge it caused, complicated our calculations. In cases when spending on various programs was sharply but temporarily increased during the pandemic, we preferred to utilize pre-pandemic data and adjust accordingly for inflation and/or other developments in order to paint a more accurate picture of the static costs. We do not include pandemic-related spending measures unless they were enacted as permanent programs. However, we make a point to highlight these costs in their relevant sections so that readers are aware of their impacts.

An essential part of our calculations relies on FAIR's latest illegal alien population estimate, which is 15.5 million (20.9 million when the U.S.-born children of illegal aliens are included) as of the beginning of 2022.[6] Our estimate is higher than those offered by most mainstream immigration research organizations, most of which stick to the oft-repeated "10-11 million" figure, despite record illegal immigration over the past couple of decades and even further surges over the past few years. Most mainstream estimates fail to take into account the constant rate of growth in this demographic, overestimate the outflow rate of illegal aliens, and/or have deceptively lowered the rate at which they believe the U.S. Census Bureau undercounts illegal aliens. Moreover, for ideological reasons, many groups also misclassify the increasing influx of unaccompanied alien minors (UAMs), Temporary Protected Status (TPS) recipients, Deferred Action for Childhood Arrivals (DACA) beneficiaries, and parolees as being in the United States "legally." This is a dishonest characterization because such individuals have not received any lawful immigration status. Rather, these illegal aliens have merely received temporary and discretionary reprieves from removal and lack a clear pathway to citizenship.

Finally, it's important to note that FAIR includes costs incurred by the minor, U.S.-born children of illegal aliens, as these costs are fully attributable to their parent's unlawful residence in the United States. Many mass-immigration apologists claim that this is an unfair inclusion, as the estimate does not include any long-term contributions made by these minors once they become adults. However, further research has demonstrated that the children of migrants – especially illegal aliens – no longer see significant economic improvement as was the case several decades ago.[7] Therefore, if we did attempt to account for their future tax contributions, we would also need to account for their reliance on state and federal benefits programs. This would likely only serve to increase our cost estimates further, not drastically lower it as many open border advocates insist.

Part I: Federal Expenditures and Receipts



Federal Education Costs

Education

Primary and Secondary Education (Title I-A) **$3,020,696,000**

The "Every Student Succeeds Act" Title I, Part A (ESEA Title I-A) provides for grants of supplemental federal funding to increase educational opportunities for and improve the academic performance of children from low-income families, among whom illegal aliens and their children are disproportionately represented. Approximately 47 percent of all K-12 students in the country qualify for these grants either individually or on a schoolwide basis.[8] In 2022, just over $17.5 billion was budgeted for this program.[9] Based on FAIR's income profile for illegal aliens, the vast majority of the children of illegal aliens will fall within the economic eligibility criteria applicable to this program.

FAIR estimates that as of 2022, after years of unprecedented illegal immigration and a surge in unaccompanied minors arriving in the United States, approximately 5 million K-12 students in the United States are illegal aliens or the children of illegal aliens.[10] Furthermore, this population is heavily overrepresented among Title I-A recipients due to their families' lower income levels, comprising nearly 20 percent of total recipients by our estimates. Using calculations based on this proportion and the program's overall budget, FAIR estimates that approximately $3 billion is spent annually on Title I-A grants to K-12 students linked to illegal immigration.

Limited English Proficiency (LEP) – Title III **$580,895,000**

The federal government provides Title III-A grant funding to the states based on census data on school-age limited English proficiency (LEP) youth. This funding is dedicated to improving English-language acquisition for students whose native language is not English. According to U.S. Department of Education data, $831,400,000 was allocated in FY 2022 in support of supplemental English language instruction.[11] Of that amount, $764,335,990 was distributed to states based on the number of English learners in their schools.

In FAIR's recent report on education, we estimated that in 2020 approximately 3.6 million LEP students in American schools were either illegal aliens or the children of illegal aliens.[12] Due to unchecked illegal migration and the arrival of unprecedented numbers of unaccompanied minors, we now estimate that the number of students connected to illegal immigration has increased to approximately 3.8 million.[13] This represents 76 percent of LEP students in the U.S. Based on the per-student costs detailed in our aforementioned study on education, it can safely be estimated that illegal aliens and their children account for almost $581 million in Title III-A funding in FY 2022.

Migrant Schooling (Title I-C) **$239,418,000**

The Migrant Education Program (MEP) was established in 1966 as part of the Elementary and Secondary Education Act. Its goal is to help migrant students who move between different areas inside of the United States regularly during the year receive an adequate education and meet academic standards. These students often face challenges to learning because they may interact with inconsistent curricula and are not settled long enough to meaningfully engage with their schools. The federally appropriated funds for this program were $423,749,000 in FY 2022.[14]

The U.S. Department of Education indicates that the primary beneficiaries of the MEP program are "the children of migrant agricultural workers and fishers."[15] The majority of migrant agriculture and fisheries workers are illegal aliens — approximately 56.5 percent — according to a study conducted by the Pew Research Center.[16] Therefore, using these assumptions as a basis for our methodology, FAIR estimates that approximately $239,418,000 of the MEP budget goes to educating the children of illegal aliens.

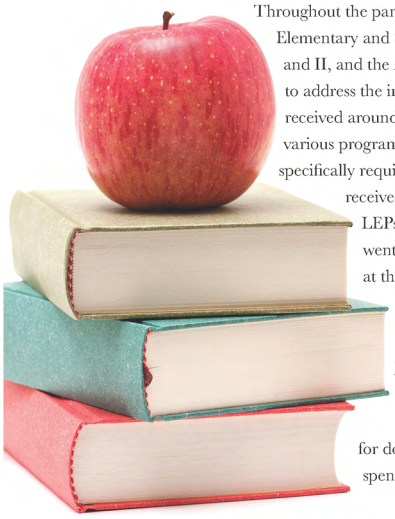
Head Start **$2,768,080,000**

The federal Head Start and Early Head Start programs combine federal funding ($11.037 billion budgeted for FY 2022) with local matching funds. There is little data on the exact enrollment of illegal-immigration-connected participants in these programs, but children with a non-English home language make up at least a third of total Head Start enrollment.[17] In FAIR's most recent study of education

costs, we determined that approximately 76% of LEP students in primary and secondary education nationwide are the children of illegal aliens. While illegal alien participation in Head Start is likely to be somewhat lower because of a general reluctance to engage with federal aid programs in many cases (as noted elsewhere in this report), this is counterbalanced by a higher poverty rate that increases the likelihood they will be eligible. Using a conservative estimate that the proportions are the same for illegal alien households with children, which correlates with the generally low English proficiency rates of illegal aliens, we estimate that around 25% of Head Start enrollment pertains to the children of illegal aliens. This means that the total federal Head Start expenditures attributable to illegal immigration are well over $2.7 billion.

COVID-19 Relief Funds

The use of pandemic relief funds for illegal aliens and their children in schools was also noted in FAIR's recent report on the excessive costs that bilingual education imposes. The COVID-19 pandemic had particularly heavy impacts on LEP students, the vast majority (76 percent) of whom are illegal aliens or the children of illegal aliens. Most LEPs do not have an English-speaking home environment to maintain their limited skills during periods of online schooling. As a result, school districts across the country were burdened with dedicating millions of dollars of COVID-19 relief funds to special bilingual/LEP programs that do not serve the general student population.



Throughout the pandemic, Congress passed three different relief packages: the Elementary and Secondary School Emergency Relief (ESSER) Fund packages I and II, and the American Rescue Plan (ARP). These programs awarded grants to address the impact of pandemic shutdowns on schools.[18] In total, schools received around $189.5 billion, an unprecedented level of federal spending, for various programs. The ARP ESSER funds for education, totaling $122 billion, specifically require states to set aside 5 percent, and districts 20 percent, of the received funding for "most affected students," specifically mentioning LEPs multiple times.[19] This means a huge allocation of limited funds went to assisting LEP students, mostly the children of illegal aliens, at the expense of taxpayers.

In addition, many districts spent large chunks of discretionary relief funding on services specifically for LEP students. Fairfax County Public Schools in Virginia, for example, spent $2,681,449 of ARP funds on LEP-specific services with no relevance to the general student population.[20] The same is true for dozens of other school districts as well. The total cost of this relief spending giveaway for illegal aliens is split across thousands of school

districts that compile budgets in different ways and is likely incalculable. If ascertained, however, it would likely be included as one of the single largest education-related costs of 2020 and 2021 that illegal aliens imposed on the American taxpayer. Since it is impossible to decipher to what degree funds were used for the education of illegal aliens, and since these are not regular annual expenses, we do not ascribe a total to this cost. However, it is something worth noting as it certainly resulted in a temporary – but significant – burden on U.S. taxpayers.

Total Federal Educational Expenditures:	
Primary and Secondary Education - Title I-A	$3,020,696,000
Limited English Proficiency (LEP) - Title III	$580,895,000
Migrant Schooling (Title I-C)	$239,418,000
Head Start	$2,768,080,000
Total	$6,609,089,000



Federal Medical Costs

Medical Costs

Most (but not all) illegal aliens are, as a matter of law, barred from receiving welfare benefits through targeted aid programs that are jointly administered by states and the federal government. This bar was put in place by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).[21] The PRWORA states that "aliens who are not qualified aliens" are ineligible for "federal public benefits" and for "state and local public benefits." The act defines a qualified alien as any immigrant "who is lawfully admitted for permanent residence under the Immigration and Nationality Act," or who meets at least one of several other exceptions listed in Section 431 of the Act. These exceptions cover many people who are unlawfully present in the United States but have been granted deferred action through programs such as parole with a set term of at least one year, TPS, and several other categories.

In addition, many states still provide subsidized healthcare services to illegal aliens (more on these programs can be found in the part of this report that covers state healthcare). These programs technically do not violate the terms of PRWORA if they are solely funded by state taxpayers. However, the diversion of state taxes into these types of programs often result in larger state requests for federal budget assistance, as including low-income illegal aliens often make states eligible for additional federal

grants. Much of this assistance is provided in the form of supplemental healthcare funding distributed to state providers.

Medicaid is a joint federal and state program that provides healthcare coverage to children, pregnant women, senior citizens, and individuals with disabilities, among others. While most illegal aliens are technically excluded from full Medicaid programs, they may still receive Medicaid coverage for prenatal and obstetric care. These services are provided based on the idea that the unborn child, rather than the illegal alien mother, is the one receiving medical treatment. In addition, under the current interpretation of the 14th Amendment to the Constitution, the U.S.-born children of illegal aliens are natural-born U.S. citizens. Quite often, they are also considered "targeted low-income children" eligible for Medicaid and other federal medical assistance programs.

Finally, it is unclear if the thousands of illegal aliens paroled into the country by the Biden administration will become eligible for Medicaid and other federal benefits. Paroled illegal aliens can receive certain benefits if the terms of their release is for a period of at least one year, but there is little information on whether these parolees from the border are receiving any set term lengths at all, and what federal benefits are being extended to them.

Uncompensated Hospital Expenditures **$8,153,000,000**

In 2017, the federal outlay to help cover uncompensated care provided to uninsured individuals was approximately $21.7 billion annually. Assuming these reimbursements occur at a similar rate today, that accounts for approximately $26.3 billion.[22] The national uninsured population of all ages was 26.4 million in the first quarter of 2022.[23] According to a 2019 estimate from the Migration Policy Institute, a little over half (53 percent) of the illegal alien population in the United States is uninsured.[24] This proportion would suggest, according to FAIR's most recent estimates of the Illegal aliens population, that roughly 8.2 million of the illegal aliens currently in the country do not have insurance coverage, making up approximately 31 percent of the total uninsured population.[25] If uninsured illegal aliens are assumed to require healthcare at a rate similar to other uninsured persons, they would make up approximately $8.2 billion of the uncompensated hospital expenditures in the United States.

Medicaid Births **$1,596,902,000**

After rising rapidly since the 1980s, births to illegal alien mothers dropped along with the overall birth rate during the Great Recession (2008-2010). Since then, the numbers have held relatively steady. The Center for Immigration Studies (CIS) estimated that in 2014, illegal alien mothers in the U.S. gave birth to 297,000 children, or 7.5 percent of total births.[26] In 2020 (the most recent year for which statistics are available), foreign-born mothers accounted for 22 percent, or 790,041, of the nationwide total of about 3.6 million births.[27]

Medicaid paid for 42 percent of all births in 2020.[28] However, a study published in 2018 found that 48 percent of foreign-born women had their births paid for by Medicaid, compared with 42 percent of native-born mothers.[29] This would mean that Medicaid covered the costs of approximately 377,000 births (48 percent) to foreign-born mothers. The cost of those births is shared between the federal and the state taxpayer. The total cost depends on the type of delivery and whether complications occur.

We assume that the birthing costs incurred by illegal alien mothers will be roughly similar to legal immigrant and native mothers. According to past medical research conducted in Colorado, illegal alien mothers "have lower rates of pre-term delivery and low birth weight infants, but higher rates of pregnancy related risk factors." These risk factors are offset by other factors, such as illegal alien mothers consuming less tobacco and alcohol than the national average, lower hypertension rates and other factors.[30] Based on the birth rates observed in the Colorado study, this indicates that roughly 201,960 (68 percent) of current illegal alien births were natural, and 95,040 (32 percent) were surgical. Again, these rates suggest that the average costs for illegal aliens will be similar to the overall national average.

The federal share of the expenditure varies among states, averaging out to approximately 63 percent overall. Thus, to determine the cost of illegal aliens using Medicaid to fund births, we remove the percentage of illegal aliens believed to have some form of health insurance, which is approximately 47 percent. The uninsured remainder comes out to 157,410 births — 107,038 naturally, and 50,371 by surgical intervention. With natural births costing $13,024 on average and surgically-assisted births averaging $22,646, the total, combined state and federal expenditure for obstetric medical costs is approximately $2,534,764,578.[31] With 63 percent of these costs being covered by the federal government, the total federal cost comes out to $1.6 billion.

This estimate is certainly on the conservative side of reality. In 2007, a report in the *Journal of the American Medical Association* found that "... a little-known part of the state-federal health insurance program for the poor," known as Emergency Medicaid, "pays about $2 billion a year for emergency treatment for a group of patients who, according to hospitals, mostly comprise illegal immigrants. Most of it goes to reimburse hospitals for delivering babies for women who show up in their emergency rooms, according to interviews with hospital officials and studies."[32] A portion of this expenditure is attributable to the $1.6 billion Medicaid spends on illegal alien births. However, there is little recent data regarding what percentage of that $2 billion expense covers emergency obstetrical services for illegal aliens (given both inflation and increased Medicaid spending since then, this figure is certainly much higher now). Without further data, FAIR is unable to estimate a reliable value for this additional expenditure.

Improper Medicaid Payments **$7,997,566,000**

The total amount of improper Medicaid payouts in the United States during FY 2022 was approximately $80.6 billion, or 15.6 percent of total outlays.[33] By contrast, Medicaid Fraud Control

Units (MFCUs) were able to recover only $1.7 billion in FY 2021 (when improper payments were $99 billion, 22 percent of total outlays), around 1.7 percent of the total improperly paid.[34]

Assuming that uninsured illegal aliens receive improper Medicaid payouts and/or commit Medicaid fraud at the same rate as U.S. citizens — a very conservative estimate, considering illegal aliens are both more likely to commit document-related fraud and have greater incentive to commit Medicaid fraud — there would be approximately 1,284,508 illegal aliens receiving improper Medicaid payouts each year. The average improper Medicaid payout per-person comes out to approximately $6,226, meaning the overall annual total loss attributable to illegal aliens is approximately $8 billion.

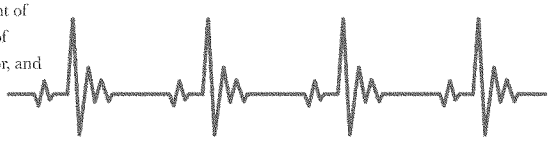
Medicaid for U.S.-born Children of Illegal Aliens **$5,385,007,000**

U.S. citizens and Lawful Permanent Residents (green card holders) are eligible for Medicaid benefits; therefore, the U.S.-born children of illegal aliens are eligible for Medicaid. While these children were born in the United States, they would not be present in the United States had their parents not entered the U.S. illegally or overstayed a visa. These children are typically classified as low-income (see FAIR's income profile of illegal aliens in this report). Because of this, they represent a significant burden on the U.S. Medicaid program.

There is a strong correlation between uninsured status and low income.[35] The vast majority of uninsured people in the United States are low-income earners, for the simple reason that it is more difficult for low-income individuals to afford health insurance and low-wage jobs are likely to offer fewer health benefits.[36] Therefore, low-income families depend more on government healthcare programs to pay for any medical treatment that they require.

Per federal guidelines, in order to be eligible for Medicaid on the basis of low income, children must be members of a family earning an income less than 138 percent of the federal poverty level (FPL). States have the option to extend Medicaid coverage to those whose income is too high to qualify under federal guidelines, but most states have set their guidelines at 138 percent of the FPL.[37] The average family headed by an illegal alien falls around or below the FPL, and therefore their U.S.-born children will be eligible for Medicaid. Many other illegal aliens are likely utilizing various methods of fraud to improperly obtain Medicaid, as regularly occurs with other federal benefit programs.

At least 53 percent of illegal alien households are uninsured, meaning that approximately 2.83 million U.S.-born children of illegal aliens are without insurance.[38] Based on the foregoing evidence, FAIR estimates that approximately 75 percent of these 2.83 million U.S.-born children of illegal aliens (2.1 million) are eligible for, and receiving, Medicaid as members of



low-income households, a similar rate to households with a non-illegal head of household. This accounts for the few illegal alien families whose income is in fact too high to qualify, as well as others who avoid interacting with federal programs to maintain a low profile.

Per the Medicaid and CHIP Payment and Access Commission, average Medicaid spending per enrolled child in 2020 was $3,500.[39] Adjusted for inflation, the total today is now around $4,030. This would make the annual Medicaid spending on the U.S.-born children of illegal aliens about $8.5 billion. The federal share of that expenditure (63 percent) is about $5.4 billion annually, with the remainder being a cost borne by the states (see the state and local portion of this report for those totals).

Affordable Care Act (ACA)

The ACA allows for eligible individuals to apply for various levels of federally subsidized healthcare, depending on their annual income. While most illegal aliens do not qualify for coverage under the ACA, some with certain designations and deferments do. These categories include those with TPS, Deferred Enforced Departure (DED), Deferred Action Status (other than DACA), victims of trafficking, some asylum applicants, and several other categories.[40]

Data is lacking on exactly how many individuals fall into each of these categories. However, when taking maximum estimates from various immigration agencies and organizations, it is estimated that somewhere between 500,000 and 1 million illegal aliens fall into an immigration category covered by the ACA. Unfortunately, without more information regarding the total number of illegal aliens that qualify for coverage along with their income levels, family size, and/or participation in other programs covered by this report, it is impossible to estimate how many illegal aliens participate in the ACA, and what level of federal subsidy they receive. However, this number is almost certainly substantial, and the federal government should be reporting the extent to which those who entered the country illegally participate in this program.

Total Federal Medical Expenditures	
Uncompensated Hospital Expenditures	$8,153,000,000
Medicaid Births	$1,596,902,000
Medicaid Fraud	$7,997,566,000
Medicaid for U.S.-born Children of Illegal Aliens	$5,385,007,000
Total	$23,132,475,000



Federal Justice Costs

Justice Enforcement

Immigration enforcement constitutes a significant portion of the overall federal law enforcement budget. Because every crime committed by an illegal alien is inherently a preventable crime, immigration has a broad effect on justice expenditures beyond the costs directly involved in securing the borders and managing ports of entry. Therefore, this report separates federal immigration enforcement expenditures into two categories: 1) the cost of securing the border, managing ports of entry, and processing/removing immigration violators from the interior; and 2) the cost of prosecuting/incarcerating federal criminal aliens and subsidizing state and local law enforcement expenses connected with illegal immigration (e.g., housing illegal aliens in local jails, information-sharing costs, etc.)

Most of these expenditures cannot be eliminated as long as the United States remains the most common destination for illegal migrants. However, many of them could be drastically reduced by the construction of a functional border barrier, the implementation of effective deterrents to illegal immigration, and the comprehensive detention and removal of criminal aliens living in the United States. In addition, the refusal of many countries to accept their own citizens when they are deported from the United States also increases costs to the American taxpayer.[41]

Federal Incarceration **$1,670,374,000**

The illegal alien population consists of both those aliens who entered the United States without authorization and those who entered the United States lawfully but overstayed their authorized period of stay. Illegal aliens are subject to removal from the United States simply because they are present in the United States without authorization. However, many illegal aliens come to the attention of DHS only when they are arrested for the commission of a crime.

Legal immigrants are also subject to deportation if convicted of certain crimes. However, data indicates that these immigrants tend to commit crimes at a lower rate than illegal aliens.[42] This is unsurprising since the very concept of illegal immigration requires a certain level of disrespect for the laws of the destination country. We include costs of incarcerating legal immigrants if their convictions are likely to lead to the loss of their immigration status.

Illegal aliens who come to the U.S. for economic gain often commit crimes such as identity theft or using fraudulent documents to work illegally, unlicensed driving, tax evasion, and/or unlawfully obtaining public benefits. Moreover, many illegal aliens cross the border without authorization specifically for the purpose of engaging in criminal activity within the U.S., such as drug and human trafficking. Conversely, legal immigrants have a greater incentive to avoid criminal behavior due to the possibility of losing their hard-earned legal status if convicted.

The majority of illegal immigrants who are convicted of crimes are prosecuted in state courts and confined to state correctional facilities to serve out their sentences. These expenses are addressed in the section of this report covering the state costs of illegal immigration. By contrast, the population of foreign-born individuals incarcerated in Federal Bureau of Prisons (BOP) facilities tends to include more illegal aliens than foreign-born populations incarcerated in state prisons.[43] This is because the federal government has exclusive jurisdiction over immigration-specific crimes. Therefore, both legal and illegal migrants convicted of criminal violations of the INA are confined to federal prisons. Illegal aliens who have been taken into custody by the federal government and placed in deportation proceedings will also be held in federal detention facilities. Both BOP and ICE maintain such facilities. This section addresses BOP costs as well as costs borne by the US Marshals Service (USMS), which detains many illegal aliens before trial and before sentencing. The following sections on ICE expenditures include the costs of detaining aliens in facilities owned and operated by that agency.



BOP statistics indicate that by the end of 2022, the number of alien inmates in BOP custody is 25,608, a number that has been slowly increasing since many prisoners were released during the COVID-19 pandemic.[44] A 2019 report by the Department of Justice estimates that 94% of alien inmates in BOP custody have no claim to lawful status.[45] The cost to incarcerate federal inmates has increased markedly in the past few years, with the FY 2020 figure of $39,924 per inmate being an approximate increase of $4,500 from the previous fiscal year.[46] While the COVID-19 pandemic has delayed the release of the most recent statistics on the cost of incarceration, generously assuming a similar figure to FY 2020 would imply annual costs of over $1 billion for alien BOP inmates alone.

The USMS also incurs significant costs related to illegal aliens because they are responsible for much of federal pre-trial and pre-sentencing detention. While USMS custody is more short-term, it also sees much higher annual numbers than the BOP. Approximately 37 percent of individuals in USMS custody at any given time are illegal aliens, with 98 percent of that group being criminal illegal aliens.[47] This high percentage of illegal aliens in USMS custody and USMS's consistent custody numbers year-over-year translate to approximately $648 million in annual spending on custody and transportation for illegal aliens.

Enforcement and Removal Operations (ERO) **$4,118,902,000**

The branch of DHS responsible for interior enforcement of the Immigration and Nationality Act is U.S. Immigration and Customs Enforcement (ICE). Within ICE, the office most directly involved in the arrest and deportation of illegal aliens is the Office of Enforcement and Removal Operations (ERO). ERO is responsible for apprehending illegal aliens and placing them in removal proceedings, detaining aliens who are a flight risk, and effectuating the removal of aliens ordered deported by U.S. immigration courts or federal district courts. To accomplish its mission, ERO works with state, local, and other federal law enforcement agencies to identify and process illegal aliens. This includes lodging "detainer" requests with state and local agencies to ensure that criminal illegal aliens are transferred into DHS custody, especially when those jurisdictions have entered into 287(g) agreements with ICE that allow local and state officers to assist with immigration law enforcement.[48]

ERO also liaises with the Federal BOP to ensure that illegal aliens being held for ICE pending immigration hearings are processed appropriately. In addition, ERO works with BOP to make sure that illegal aliens incarcerated for federal crimes are promptly deported when their sentences are completed. ERO activities incur a broad range of annual expenses, including holding aliens in DHS-operated detention facilities, or leased facilities. The FY 2021 budget for ERO was about $4.11 billion, and it is appropriate to attribute the entirety of this budget to combating illegal immigration.[49]

Customs and Border Protection (CBP) **$8,565,574,000**

U.S. Customs and Border Protection (CBP), another DHS agency, is responsible for securing the borders of the United States and managing land, sea, and air ports of entry. CBP acts as the first line of defense against illegal entry, alien and drug smuggling, and human trafficking. A large portion of CBP's responsibilities relates directly to detecting, deterring, and prosecuting illegal immigration.

CBP is also responsible for the trade management, impost collection, licensing and enforcement duties that were handled by the U.S. Customs Service prior to the formation of DHS. Therefore, we must determine which costs relate to trade management and impost functions and which arise directly from border security functions.

Breaking down the enacted FY 2022 budget by component, Congress directly appropriated a total of $8,565,574,000 for the components of CBP involved in border security, which is effectively everything outside of the CBP Office of Trade.[50] This large figure reflects the scale of the border crisis and its continuous growth. The FY 2023 President's Budget, which is essentially the administration's wish list, would eliminate appropriated border wall funding but ultimately increase the border-related spending total above $9 billion if enacted because of the demands illegal immigration imposes on CBP.

Other ICE Operations **$1,715,897,000**

ICE is responsible for enforcing both civil and criminal immigration laws within the interior of the United States. Non-ERO ICE operations conducted by the Homeland Security Investigations (HSI) department involve detecting, arresting, and prosecuting lawfully present aliens who engage in criminal acts, as well as detecting, detaining, and criminally prosecuting illegal aliens involved in, human trafficking and smuggling, drug trafficking, and gun running. ICE is also responsible for the enforcement of U.S. customs laws within the interior of the United States and investigations of certain transnational crimes. As such, it handles some of the impost collection, licensing and enforcement duties that were handled by the U.S. Customs Service prior to the formation of DHS.

Accordingly, it is necessary to distinguish non-ERO ICE expenses associated with the criminal prosecution of lawfully admitted alien criminals, international terrorism interdiction, and customs enforcement duties, from those expenses related to the criminal investigations of illegal aliens.[51] HSI operations are budgeted at approximately $1.7 billion in FY 2022.[52] HSI's work is almost always heavily involved with transnational crime, involving violations of visas and other immigration-related offenses. HSI is also responsible for investigating the cartels that smuggle narcotics and people into the United States, and much of their work on transnational crime is devoted to this particular menace.

State Criminal Alien Assistance Program (SCAAP) **$234,000,000**

The State Criminal Alien Assistance Program (SCAAP) provides federal payments to states and localities that incurred correctional officer salary costs for incarcerating criminal illegal aliens who have at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated for at least 4 consecutive days during the reporting period.[53] This program tends to cover only a minute percentage (typically less than one percent) of the full cost of incarceration, and the rest are absorbed by state and local jurisdictions. Appropriations for this program were $244,000,000 in FY 2021 and $234,000,000 in FY 2022.[54] It should be noted that the Biden administration formally proposed removing all funding for this program over the past two fiscal years, which would have removed even the most meager federal compensation received for the immense cost that criminal illegal aliens impose on the states who incarcerate them. So far, Congress has rejected these proposals.

Executive Office for Immigration Review (EOIR) **$622,809,000**

The Executive Office for Immigration Review (EOIR) is a DOJ agency that includes the U.S. Immigration Court, the Board of Immigration Appeals (BIA) and the Office of the Chief Administrative Hearing Officer (OCAHO). The U.S. Immigration Court hears deportation cases lodged against both lawfully admitted and illegal aliens. The BIA hears appeals of U.S. Immigration Court Decisions. The OCAHO hears cases involving allegations of knowingly hiring illegal aliens and failure to comply with employment verification requirements. The vast majority of the work performed by EOIR is handled by the U.S. Immigration Court, which is faced a case backlog amounting to more than 1.9 million active cases at the end of FY 2022.[55]

Based on data available through Syracuse University's Transactional Records Access Clearinghouse (TRAC), which analyzes deportation cases by the type of charge levied against the respondent, roughly 70 percent of new cases are based upon entry without inspection, terrorism, crime, and other violations associated with illegal alien status.[56] This is a significant increase in cases involving illegal aliens, as opposed to visa violations, from previous years and coincides with the rapid collapse of border security. 31.1 percent of new immigration cases are categorized as "other immigration charge", and even an extremely generous assumption that these primarily represent overstays or violations of valid visas still leaves the percentage of new cases involving illegal aliens much higher than in previous years.

EOIR's budget was $673 million in FY 2020, $734 million in FY 2021, and $891 million in FY 2022. Using the most recent appropriation, which largely coincides with the time period the TRAC data covers, EOIR funding used on deportation cases for illegal aliens is approximately $622,809,000. The President's Budget request for EOIR in 2023, not enacted, is $1.355 billion, but the vast majority of this increase is split between dubious "legal access initiatives" to fund lawyers for illegal aliens or the opening of more immigration courts to process cases faster; if enacted, this cost could nearly double in the near future.

Alien Minors **$8,006,000,000**

The number of unaccompanied minors entering the United States continues to surge in an unprecedented manner, as many would-be illegal aliens are aware that an unaccompanied minor is a potential anchor for future migration down the line and with smugglers acutely aware that children are given much less scrutiny. Unfortunately, these minors often suffer untold horrors as they are brought to the American border. The number of unaccompanied minors entering the United States hit a record 122,000 in FY 2021 and then again with 130,000 in FY 2022.[57]

The Department of Health and Human Services (HHS) Administration for Children and Families (ACF) is tasked with providing for these minors until they are connected with family residing in the United States, placed in foster care, or repatriated. As the scale of UAM entries grows, so do the costs associated with caring for them. These costs have increased on a shocking scale in recent years, with the FY 2020 budget of just over $1.3 billion increasing to over $3.6 billion (after a significant transfer of COVID relief funding) in FY 2021 and a staggering $8 billion in total spending in FY 2022.[58] This amounts to the spending of $61,584 per unaccompanied minor entering the shelter system in FY 2022, nearly tripling the per capita costs from our previous comprehensive cost study for a number of unaccompanied alien minors almost twice as large.

NOTE: The financial impact of UAMs on the nation's public school systems is included, as a separate cost, in the sections of this report pertaining to education.

Byrne Grants **$4,180,000**

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program is the primary provider of federal criminal justice funding to state and local jurisdictions. The JAG Program provides state and local governments with funding to support law enforcement, prosecution, court, and corrections programs. Funding for this program was $92,888,141 in FY 2022, a significant decrease from the amounts routinely allocated in years before FY 2021.[59]

The federal government provides SCAAP funding to states that compensates for the roughly 4.5 percent of the national total of state and local prisoners who are illegal aliens. Since the majority of illegal aliens held in state and local custody are prosecuted in state and local courts, this is a good measure for estimating the share of Byrne grants attributable to the arrest, prosecution, and incarceration of illegal aliens. 4.5 percent of the FY 2022 allocation is just over $4 million.

DOD Funding for National Guard **$191,625,000**

In order to handle the border crisis, the U.S. Department of Defense continues to keep around 2,500 National Guard members from states across the country deployed to the U.S.-Mexico border to assist the

U.S. Border Patrol in support missions.[60] States have committed varying numbers of troops and other means of support, like aviation assets, with funding for the operation provided by the Department of Defense.

FAIR estimates the cost of these deployments based on publicly available figures relating to the pay of state National Guard units deployed at the border. At the prevailing rate for actively deployed National Guard, this operation (which has been ongoing for multiple years) is estimated to currently cost just over $190 million annually.

Criminal Gangs

In its 2009 National Gang Threat Assessment, the FBI concluded that criminal street gangs, whose members are often illegal aliens, are responsible for the vast majority of violent crimes in the United States, as well as the distribution and trafficking of most illegal drugs.[61] In the intervening years, the presence of illegal alien gangs, especially from Central America, has only increased. Established gangs like MS-13, its rival the 18th Street Gang, the Latin Kings, and growing numbers of new Dominican, Middle Eastern, and Somali gangs are responsible for a broad range of both local and transnational crimes, including: theft, extortion, murder, drug trafficking, human/sex trafficking and gun running.

Because it is impossible to truly quantify the comprehensive cost of gangs to American taxpayers, FAIR does not included an estimate of those expenditures. Nevertheless, it is important to remember that crimes committed by transnational gangs represent a significant portion of the costs imposed on U.S. taxpayers by lax immigration enforcement and irresponsible immigration policies.

Total Federal Justice Enforcement Expenditures	
Federal Incarceration	$1,670,374,000
Enforcement and Removal Operations (ERO)	$4,118,902,000
Customs and Border Protection (CBP)	$8,565,574,000
Other ICE Operations	$1,715,897,000
State Criminal Alien Assistance Program (SCAAP)	$234,000,000
Executive Office for Immigration Review (EOIR)	$622,809,000
Alien Minors	$8,006,000,000
Byrne Grants	$4,180,000
DOD National Guard Deployment	$191,625,000
Total	$25,129,361,000



Federal Welfare Costs

Welfare Costs

This section details the profound impact that illegal immigration exerts on programs intended to provide financial aid or services exclusively for low-income Americans. Most, but not all, illegal aliens are theoretically ineligible for the welfare programs covered in this section. However, virtually all federal welfare programs available to the children of U.S. citizens are also available to U.S.-born children of illegal aliens because those children are, under the current constitutional interpretation, U.S. citizens. We include this information because the costs of providing benefits to this cohort are directly attributable to their parents' illegal presence in the United States.

USDA Food and Nutrition Service **$1,550,108,000**

The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) operates the National School Lunch Program (NSLP), the School Breakfast Program (SBP), Special Milk Program (SMP), and other food programs that provide subsidized meals to school children. These programs operate in approximately 100,000 public and non-profit private schools and residential child care institutions. They furnish low-cost or free breakfast, lunch, and snacks to millions of children each school day. However, these schools make no effort to identify whether the students using these programs are legally in the United States.

There are approximately 30 million children receiving meals from these programs.[62] According to research conducted by CIS, approximately 48 percent of illegal alien households received some form of benefit under the school lunch program.[63] FAIR estimates that there are roughly 5.1 million students who are the children of illegal aliens.[64]

Based on these totals, approximately 2.45 million children of illegal aliens are receiving this benefit, which is a conservative figure given the typically low incomes of illegal alien households. The funding for school meal programs, including breakfasts, lunch, snacks and milk, cost nearly $18.8 billion in FY 2019, the last year before the pandemic and the subsequent two-year period (2020-2022) of free school lunches for all students (which was rolled back with the 2022-2023 school year).[65] To estimate the impact of illegal immigration on school nutrition programs, we take our estimate of the number of illegal alien children and compare it to the total number of participants in school nutrition programs. This comparison indicates that almost 8.3 percent of children receiving meals are part of an illegal alien household. Therefore, we conclude that $1.55 billion of the federal funds expended annually on the above USDA FNS programs goes to the children of illegal aliens.

Supplemental Nutrition Assistance Program (SNAP) **$5,757,872,000**

Colloquially referred to as "Food Stamps," the Supplemental Nutrition Assistance Program (SNAP) is also administered by USDA-FNS. Most illegal aliens are ineligible for SNAP, but their U.S.-born children are eligible. In certain limited circumstances, elderly and disabled citizens residing with illegal alien relatives may also qualify for SNAP benefits, but they account for only a very small percentage of use by illegal alien households.

Research conducted by CIS found that approximately 31 percent of illegal alien households with children benefit from SNAP.[66] The estimated total number of American households headed by an illegal alien is approximately 6.7 million, of which 2.7 million contain at least one child.[67] This would indicate that around 825,000 illegal alien households draw benefits from SNAP.

Given that the average illegal alien household with children has 2.5 children, almost 2.1 million children of illegal aliens are likely to draw SNAP benefits. Data from the USDA indicates that the average monthly benefit per participant in FY 2022 was $232.72, or $2,793 per year.[68] Accordingly, the total estimated cost to the American taxpayer of providing SNAP to the children of illegal aliens is almost $5.8 billion.

Women, Infants, and Children (WIC) **$999,961,000**

The Special Supplemental Nutrition Program for Women, Infants, and Children, commonly known as "WIC", provides federal grants to states for supplemental foods, healthcare referrals, and nutrition education for low-income, pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk.

The WIC program is primarily funded through two separate federal grants: a food grant, and the Nutrition Services and Administration grant. In FY 2022, the food grant was approximately $4.7 billion and the Nutrition Services grant approximately $2.2 billion. The total grant allocation was $6,855,458,974.[69]

Eligibility for WIC is based on income. Currently, those earning between 100 percent and 185 percent of the FPL inclusive qualify. According to the U.S. Department of Agriculture, in FY 2021 WIC served an estimated 43 percent of all infants in the United States.[70] WIC is available to anyone in the United States who falls within a WIC eligible category, is a full-time resident of the state where he/she is applying, meets the income requirements, and is at risk for malnutrition. As a federally funded but state-administered program, each state is entitled to determine whether it will allow illegal aliens to draw WIC benefits. All fifty states have extended eligibility to illegal aliens.

A study by CIS found that approximately 35.1 percent of illegal alien households with children use the WIC program.[71] Using FAIR's baseline of 6.7 million illegal alien households, this would indicate that approximately 937,000 illegal alien households draw benefits under the WIC program, equating to roughly 2.3 million individuals. In February 2022 (the most recent month of available statistics), WIC served approximately 6.2 million participants.[72]

Based on FY 2021 data, the average annual benefit per participant is approximately $426.96.[73] This means that the cost to taxpayers for providing WIC to illegal aliens is approximately $1 billion.

Temporary Assistance for Needy Families (TANF) **$1,430,527,000**

The Temporary Assistance for Needy Families (TANF) program is the current successor to the former Aid to Families with Dependent Children program. TANF was created to help needy families achieve self-sufficiency by providing temporary cash assistance to supplement their earned income. In order to qualify, applicants must be either pregnant or responsible for a child under 19 years of age, meet income requirements, and be unemployed or underemployed.[74]

As with SNAP, most illegal aliens are theoretically barred from using TANF. However, illegal alien families that have U.S.-born children may still obtain significant financial assistance via this program. Certain TANF benefits are also available to the U.S. citizen children of illegal aliens who are being cared for by grandparents, foster parents, aunts, and uncles. These are referred to as "child-only" applications.

Despite TANF eligibility provisions requiring that applicants be working, seeking work, or training for employment, neither income earned by parents nor caregiver resources are considered when a child-only TANF case is processed.[75] Therefore, virtually all U.S. citizen children of illegal aliens may be eligible for TANF, under the right circumstances, and the costs for providing TANF to the U.S. citizen children of illegal aliens are borne entirely by the U.S. taxpayer.

There were 1,479,103 child recipients of TANF benefits as of June 2022, according to the DHHS's Office of Family Assistance (OFA).[76]

In FY 2021, according to DHHS OFA, federal spending on TANF amounted to about $15.1 billion (TANF funding is not adjusted for inflation or other circumstances, so funding levels have not changed significantly since the program's creation by the PRWORA of 1996).[77] Based on CIS data, FAIR estimates that U.S. citizen children of illegal aliens accounted for almost 9.4 percent of the TANF caseload in FY 2022.[78] Using this percentage, the total cost for providing TANF benefits to the U.S.-born children of illegal aliens comes out to approximately $1.43 billion.

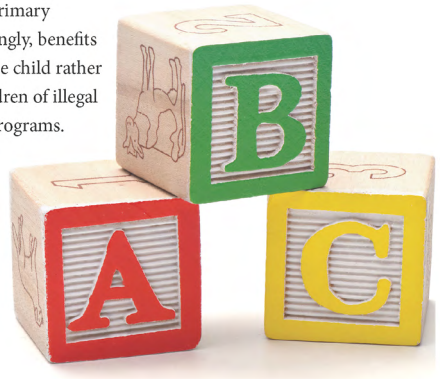
Child Care and Development Fund (CCDF) **$911,307,000**

The U.S. Department of Health and Human Services' Child Care and Development Fund (CCDF) programs are an additional source of welfare benefits that are available to U.S.-born children of illegal aliens, and some illegal alien children through the Head Start and Early Head Start programs. The CCDF program is overwhelmingly federally funded, but is matched in part by state funding.

Pursuant to the Child Care and Development Block Grant Act of 2014, the program matches and expands upon state funds spent on programs providing affordable child-care services to low-income families who work, are training for work, attending school, or whose children receive government protective services.[79]

Assistance is provided in the form of either a contracted childcare program or a voucher that may be used to access care from any provider that meets state requirements. Eligibility requirements for these programs vary widely among states.

Most illegal aliens are not eligible for CCDF programs. However, under relevant federal rules and regulations, the recipient child is considered the primary beneficiary of CCDF childcare programs. Accordingly, benefits are awarded based on the immigration status of the child rather than the parents. As a result, many U.S.-born children of illegal aliens receive subsidized childcare under CCDF programs.



In FY 2022, $9.65 billion federal funds were allocated to the program.[80] While COVID-19 served as a justification to spend almost $50 billion in additional temporary CCDF funding (a part of which was undoubtedly spent on the children of illegal aliens), we do not include this spending spree in our estimate. The

reason is because there is no clear indication at this moment that this spending will be permanent (in the case of these funding streams, the deadlines for obligating the money have either expired, or will expire in 2023).[81]

Since the child is considered the primary beneficiary of CCDF programs, HHS appears to collect little information on the immigration status of the parents of the recipient children. Therefore, we must estimate the childcare expenses for illegal aliens paid out under CCDF programs using the TANF data, for which we estimated that 9.4 percent of the caseload consists of the children of illegal aliens. We do this because the demographics of children from illegal alien households who are eligible for CCDF are very similar to the population that will typically seek child-only TANF benefits and the qualifications for each program set by law cover very similar income groups. While TANF income thresholds are set at the state level, CCDF income eligibility is based on the FPL and state median incomes and tends to have higher thresholds in general; hence, our method of using TANF thresholds may result in a slight underestimation of illegal alien families collecting CCDF benefits. However, it provides the most accurate approximation possible with limited data available.

Applying this proportion to federal CCDF expenditures (the state share is discussed in the state welfare programs section), this works out to about $911 million spent on children with at least one illegal alien parent.[82]

Supplemental Security Income (SSI) **$600,350,000**

The Supplemental Security Income (SSI) program applies to some U.S.-born children of illegal aliens if they have a "medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for at least 12 months in a row … provided your impairment keeps you from engaging in substantial gainful activity for at least 12 months in a row."[83]

According to the existing research, it appears that only around 1.1 percent of illegal alien households participate in this program.[84] That would correspond to 73,400 households. If we err on the side of caution and assume that only one person in each of these households is an SSI recipient, and multiplying them by an inflation-adjusted average yearly benefit of $7,363, federal SSI payments attributable to illegal immigration would amount to a minimum of $541 million annually. Federally-administered state supplements add an additional $60 million to this amount.[85]

Public Housing **$334,442,000**

When a household is eligible for public housing benefits but one or more members are illegal aliens,

they are eligible for prorated or reduced federal housing benefits, depending on the specific program.[86] However, housing benefit fraud is common and illegal aliens often live covertly with citizen and lawfully present relatives who are receiving housing benefits.

Currently there is only fragmented data on the use of housing benefits by families with illegal alien members. According to a Congressional Research Service (CRS) report, mixed-status families make up approximately 0.5% of all assisted households.[87] In addition, the report reveals that this percentage totals more than 25,000 mixed status families consisting of more than 108,000 people, including roughly 55,000 children who were the U.S.-born children of illegal aliens.[88] At a minimum, therefore, the eligible children of illegal aliens cost taxpayers approximately $334 million annually, based on the average benefit received per year.[89] Barring additional information regarding the immigration status of the other households covered by this program, it's impossible to reliably estimate the entire cost of this program.

Total Federal Welfare Programs	
Meals in Schools	$1,550,108,000
Supplemental Nutrition Assistance Program (SNAP)	$5,757,872,000
Women, Infants, and Children (WIC)	$999,961,000
Temporary Assistance for Needy Families (TANF)	$1,430,527,000
Child Care and Development Fund (CCDF)	$911,307,000
Supplemental Security Income (SSI)	$600,350,000
Public Housing	$334,442,000
Total	$11,584,567,000



Total Federal Expenditures

Overall Federal Fiscal Costs before revenue

The approximately $66.4 billion in federal expenditures attributable to illegal aliens is staggering, and constitutes an increase of 45 percent since 2017. This amounts to roughly $3,187 per illegal alien, per year.

FAIR believes that every concerned American citizen should be asking our government why, in a time of increasing costs and shrinking resources, it is spending such large amounts of money on individuals who are not authorized to be in the United States. This is an especially important question in view of the fact that the taxes paid by illegal aliens offset very little of the enormous costs stemming from their presence in the country.

Total Overall Federal Expenditures	
Federal Educational Expenditures	$6,602,699,000
Federal Medical Expenditures	$25,129,361,000
Federal Law Enforcement	$23,132,475,000
Federal Welfare Programs	$11,584,567,000
Total Federal Expenditures	$66,449,136,000



Federal Tax Payments and Credits

Taxes collected from illegal aliens help offset fiscal outlays and therefore must be included in any examination of the cost of illegal immigration. However, illegal alien advocates frequently cite the alleged large tax payments made by illegal aliens as a justification for their unlawful presence and as a reason itself to grant them amnesty. That argument is nothing more than a red herring. Such claims rarely look at the costs associated with illegal immigration, and instead only focus on the amounts contributed to the economy and paid in taxes.

Most studies grossly overestimate both the taxes actually collected from illegal aliens and, more importantly, the net amount of taxes actually paid by them (i.e., the amount of money collected from illegal aliens and ultimately kept by the federal government). A predominant reason for this is that in recent years, the United States has focused on apprehending and removing almost solely criminal aliens (and since President Biden took office, many criminal aliens are now protected from deportation as well). Because of this, the majority of illegal aliens seeking employment in the United States now live in an environment where they have little fear of deportation even if discovered.

This increasingly comfortable environment has created an environment where most working illegal aliens are both able and willing to not only work in the above ground economy, but even file tax returns. Because the vast majority of illegal aliens hold low-paying jobs, most who file tax returns actually wind up receiving a complete refund of all taxes paid. Many will receive credits in excess of their annual

deductions. As a result, it's often beneficial for illegal aliens to file tax returns with the IRS, knowing that it will not subject them to removal, and will likely result in a monetary profit. Indeed, the IRS has stated in the past that they have no intention of reporting known or suspected illegal aliens who file tax returns.[90]

Government data support this argument. According to the latest information available from the Congressional Budget Office (CBO) from 2019:[91]

> The lowest-income households in the United States (the bottom 20 percent) had an average income of about $20,000 before taxes and transfers and paid an average net federal income tax rate of −11.1 percent.
>
> The second-lowest 20 percent had an average household income of about $50,000 before taxes and transfers and paid a net federal income tax rate of 1.7 percent.

In 2017, FAIR estimated that the average household headed by an illegal alien earned approximately $36,000 per year. Since that time, the overall average household income for the country has increased by approximately 13.2 percent.[92] Using the same methodology as before and assuming, generously, that the income for illegal aliens has increased at the same rate as the overall average, this cohort now earns approximately $40,800 annually.

FAIR estimates that there are approximately 6,673,000 households with an illegally present head of household.[93] This figure was derived from previous research from FAIR and organizations such as the Heritage Foundation and Pew Research, then applied to our most recent estimate of the illegal alien population.[94,95]

We therefore estimate that illegal aliens in the United States earn a gross income of approximately $272,258,400,000 annually. Therefore, despite making up approximately 4.7 percent of the entire U.S. population, illegal aliens only contribute approximately 1.3 percent of the gross personal income earned in the country.[96]

Income Tax

Income Tax Paid **$4,146,850,000**

To determine how many illegal aliens earn an income significant enough to require that they pay more in income taxes than they receive in benefits, several factors must be considered. First: many illegal aliens who are paid in cash and work under the table avoid paying taxes regardless of what their income level happens to be. Second: there is only a small population of visa overstayers and illegal entrants who possess the specialized skills sufficient to earn an income which results in a net tax payment greater

than the amount they receive in benefits. Finally: those illegal aliens who are neither "white collar" nor "highly-skilled" business visa overstayers are unlikely to be paying more in taxes than they receive in benefits. As mentioned before, the first and third cohorts comprise the vast majority of illegal alien households.

However, a small number of illegal aliens may work jobs that earn enough to necessitate a net payment of income tax payments. Many of these workers with high earning potential use fraudulent means to obtain employment. These include using stolen or fake Social Security Numbers (SSNs), overstaying their high-earning occupational visa, or working as "subcontractors," a loophole which allows employers in many states to avoid verifying their employment eligibility. A small number of illegal aliens who hold work authorization (especially college-educated DACA students and TPS holders) will also fall into this category.

Based on data from the Bureau of Labor Statistics (BLS), the American Community Survey (ACS), and previous FAIR estimates, the aboveground illegal alien labor force participation rate has likely decreased about 1 percent since our last report in 2017.[97] The main reasons for this decrease are the lingering impacts of the COVID-19 pandemic along with a more generous welfare environment at both the federal and state levels. The unemployment rate among the foreign-born has also increased by approximately 8 percent during this time period. Based on these factors, and adjusted to fit the current illegal alien population, we estimate that approximately 7.9 million illegal aliens are participating in the aboveground economy, with just under 7.5 million currently employed. We also estimate that an additional 2.6 million illegal aliens are participating in the underground economy and are therefore paying no federal taxes at all.[98] This indicates that illegal aliens have a slightly higher labor force participation rate than the overall foreign-born population (67.8 percent vs 64.7 percent, respectively). This makes sense as a higher proportion of illegal aliens are in single-member households, and the primary driver of illegal immigration to the United States is economic opportunity.

In FAIR's 2017 report, we estimated that, in addition to visa overstayers who worked higher earning jobs, approximately 3 percent of the overall illegal alien workforce employed in the open economy falls within an income bracket that requires them to pay more in taxes than they receive in benefits.[99] Based on currently available data, we believe this proportion has stayed constant.[100] This means that approximately 414,685 illegal aliens currently fall into this category.

In order to determine the average income of those illegal aliens who pay more in taxes than they receive in credits, we assume that they earn, on average, a wage similar to that of a foreign-born worker with at least a bachelor's degree. In 2020, that income was approximately $71,000 for individuals ($82,000 when adjusted for inflation).[101] Assuming standard deductions, this makes the taxable total approximately $69,050,[102] and places the alien in the 22 percent tax bracket.[103] This means the average federal income

tax paid is approximately $10,000 per individual (Social Security and Medicare taxes are calculated later in this section). This means that illegal aliens who pay more in income taxes than they receive in benefits are contributing approximately $4,146,850,000.

Additional Child Tax Credit **$5,400,000,000**

Although it seems counterintuitive, large numbers of illegal aliens file tax returns. Many wish to establish a record of complying with tax laws in case a new amnesty is enacted (full payment of taxes owed was a requirement under the 1986 amnesty, and it is often listed as a requirement in recent amnesty proposals). Others want to take advantage of various benefits and credits that are available to them. One benefit is the Additional Child Tax Credit (ACTC), which is an annual lump sum paid by the U.S. Treasury to low-income filers with citizen children even if their parent does not have a SSN and has no tax liability. As the IRS explains on its website, "It [the ACTC] is a refundable credit, which means taxpayers may receive refunds even when they do not owe any tax."[175] However, to receive the funds a tax return must be filed.

Most illegal aliens who are not using a stolen or fraudulent SSN file their tax return using an Individual Tax Identification Number (ITIN). An ITIN allows individuals who don't qualify for a SSN to file income tax returns. The vast majority of ITIN recipients are illegal aliens according to the federal government. However, in some instances, lawfully permitted migrants who are not eligible for Social Security Numbers, or lawfully permitted migrants who are working without authorization, may apply for ITINs as well. According to the U.S. Treasury Department, there were 5.4 million active ITINs in 2021.

Per the Treasury Inspector General for Tax Administration (TIGTA), the U.S. Department of Treasury paid $4.2 billion to 2.18 million illegal alien claimants using ITINs in 2010.[176] The TIGTA report noted a very strong correlation between tax returns filed using an ITIN and the claim for the ACTC, i.e., 93 percent of all such cases. In addition, the report noted allegations that some filers for the credit were identifying children who did not have SSNs because those children lived abroad. However, the report still offers strong evidence that at least 90 percent of ITIN filers for tax credits are illegal aliens.



As part of President Biden's $1.9 trillion

stimulus package, the ACTC increased to $3,600 for children under six, and $3,000 for children between six and 18.[105] Additionally, the income threshold was raised to $150,000 for families, and $75,000 for single filers. The U.S.-born children of illegal aliens who have SSNs are allowed to take part in this benefit so long as one of their parents have an ITIN or SSN. FAIR estimates that there are nearly 2.7 million households with at least one illegal head and one child and 5.4 million active ITIN filers, nearly all of whom are believed to be illegal aliens. Furthermore, there are more than 5.3 million U.S.-born children of illegal aliens who hold SSNs.

FAIR estimates that less than 5 percent of illegal alien households make above the threshold which would disqualify them for this credit (see the federal income tax section of this report). However, we also estimate that approximately 25 percent of the illegal alien workforce participates in the underground economy, therefore paying no taxes and receiving no credits. While it's most likely that the majority of underground economy workers are single-person households without U.S.-born children, we will assume the ratio is even due to a lack of hard data. This means that illegal alien households received approximately $13.4 billion in child tax credits in 2022 for the 2021 tax year.[106]

However, ACTC totals reverted back to the previously set amounts for the 2022 tax year since Congress declined to extend the increased limits. So, while we estimated that illegal aliens received $13.4 billion for the 2021 tax season, we estimate that this amount will decrease dramatically to somewhere in the area of $5.4 billion going forward, based on the current limits set by the IRS and other restrictions.[107]

This is the total that we use since it better represents what the amount will be in future years, barring a reinstatement of the COVID-era expansion. However, it is important to highlight the fact that illegal aliens received approximately $8 billion in tax credits under the Biden Administration's stimulus package for tax year 2021.

Earned Income Tax Credit **$2,987,987,000**

The Earned Income Tax Credit (EITC) is a refundable tax credit available to low and moderate-income individuals who are employed. The amount paid depends on a recipient's income, marital status, and number of children. The credit increases with each additional dollar earned, until a maximum credit amount is reached. In tax year 2022, these limits ranged from $560 to $6,935.[108] The average EITC benefit in 2013 was $2,411.[109]

According to the IRS, a family with less than $53,865 in earnings and two dependents would have zero tax liability and qualify for an EITC of $5,980. Instead of paying a tax on income, that worker would receive a net profit courtesy of the American taxpayer. Based on an annual household income of approximately $40,600 and an average household size just over three, most illegal alien households would qualify for a credit of approximately $4,025. This is assuming, however, they were eligible for the program.

Theoretically, most illegal aliens are barred from participating in the EITC program. However, there is no provision in the relevant statutes specifically barring individuals who are unlawfully present from collecting an EITC; rather, anyone filing for an EITC is required to have a valid SSN and must be considered a "resident alien" for taxation purposes. This requirement blocks those who cannot obtain a SSN from collecting an EITC. The program is also closed to ITIN holders.[110] However, there are certain classes of illegal aliens who are eligible for SSNs, such as parolees, TPS holders, and DACA recipients. Once these illegal aliens meet the criteria for being a "resident alien," they may apply for and receive the EITC.[111]

However, there are several major designations (along with a collection of smaller categories) that illegal aliens can obtain which would provide them a Social Security Number and work authorization within the United States. Below is a list of those categories and how many illegal aliens FAIR estimates to hold those designations:

DACA: 594,000

TPS: 450,000

Qualified asylum applicants: 508,000

Stolen identifications and fraudulent SSNs: 977,000

Other designations offering SSNs: (at least) 440,000[112,113]

Total: 2,969,000

Based on FAIR's estimates regarding household size, income, and employment participation rates, we assume that approximately 25 percent of this population will be tax filers receiving the EITC at the average credit of $4,025. This means that illegal aliens receive just under $3 billion in these tax credits.

Net Income Tax Payment and Credit Receipt **$4,241,137,000**

Therefore, although illegal aliens do technically pay billions in income taxes every year, they ultimately receive a far greater amount in tax credits. As our estimate details, because illegal aliens pay about $4.1 billion in income tax and receive tax credits of $5.4 billion (ACTC) and $3.0 billion (EITC), the U.S. Treasury suffers a net loss of $4.2 billion annually.

Other Taxes

Social Security and Medicare Taxes **$19,527,768,000**

Illegal aliens who work in the open economy will normally have Social Security and Medicare taxes withheld, with a matching amount paid by the employer. The standard withholding amount for workers and employers is 6.2 percent each (12.4 percent total) for Social Security and 1.45 percent (2.9 percent total) for Medicare.

A 2010 Social Security Administration (SSA) actuarial note on the impact illegal aliens have on the Social Security Trust Fund estimated that illegal aliens pay a total of $13 billion into the Social Security trust fund annually.[114] The report also stated that illegal alien retirees, even though nearly all are technically excluded from retirement benefits even if they hold a SSN,[115] managed to receive approximately $1 billion payouts every year. This makes the total net payment into the fund by illegal aliens approximately $12 billion annually. At the time, the report indicated that the primary way in which illegal aliens obtained Social Security benefits was by using stolen/fraudulent Social Security Numbers, or through a small number of those receiving deportation deferment. Since then, with the implementation of DACA and the expanded utilization of TPS, parole and other programs that grant work authorization to illegal aliens, a much higher number are now contributing to the program.

Based on FAIR's estimate of the total earnings contributed by illegal aliens to the aboveground economy, total contributions by illegal aliens has likely increased to approximately $16.9 billion.[116] This figure falls closely in line with the 2010 SSA estimate when adjusted for the increase in the illegal alien population and their associated incomes since that time.

Because nearly all who pay into the Social Security Trust Fund will also pay into Medicare, and since the rate is similarly fixed, we extrapolate from our Social Security analysis to determine how much illegal aliens pay into Medicare. The Medicare deduction rate is 1.45 percent for both employees and employers, which is 23.4 percent of the Social Security deduction rate. Therefore, the total amount paid into Medicare by illegal aliens is 23.4 percent of the Social Security rate. This comes out to approximately $3.9 billion.

Adding these figures together, we estimate that illegal aliens make approximately $20.8 billion in Social Security and Medicare tax contributions annually. These estimates again are conservative, as we operate on the assumption that virtually all illegal aliens working in the open economy are paying social security taxes.

According to data contained within the 2010 SSA actuarial note, illegal aliens recoup approximately 7.7 percent of what they pay into the Social Security program, which means that they are likely receiving

around approximately $1.3 billion in improper payments each year. This makes the net total paid in Social Security and Medicaid approximately $19.5 billion.

Excise taxes **$932,864,000**

The federal government also receives revenue in the form of excise taxes on the sale of consumer goods such as fuel, tobacco, alcohol and airline tickets. Here, we include a rough estimate of receipts by the federal government from fuel, tobacco, and alcohol purchases. We do not include an estimate of excise revenue generated by illegal alien purchases of airline tickets based on the reasonable presumption that most illegal aliens engage only in very limited commercial airline travel.[117]

Fuel Taxes

The United States consumed approximately 135 billion gallons of motor gasoline in 2021, which averages out to about 592 gallons per licensed driver.[118] We assume that the illegal alien rate of gasoline consumption is slightly lower than it is for the lawful migrant and U.S. citizen population. This presumption is based on the fact that many states do not permit illegal aliens to obtain driver's licenses. In addition, many illegal aliens fall into an income bracket which limits the ability to purchase, maintain, insure, and operate a motor vehicle at the same rate as the general public. Moreover, it is safe to assume that those illegal aliens that do drive, minimize the amount that they drive due to their unlawful status and lower average income.

It is important to note that all 50 states now allow DACA recipients, TPS holders, and several other categories of illegal aliens with deferred deportation to obtain drivers licenses.[119] Moreover, a growing number of states are making licenses available to all illegal aliens.[120] Because of this, we assume that a greater percentage of illegal aliens are driving now than when this report was last published.

Based on these assumptions, we estimate that approximately 65 percent of adult illegal aliens drive on a regular basis,[121] compared to more than 80 percent of American adults overall.[122] This means that approximately 9 million illegal aliens drive in the United States. Furthermore, we assume that they consume, on average, approximately 70 percent as much fuel as the overall average driver, or around 414 gallons each year. With the current federal fuel tax at 18.4 cents per gallon, that means illegal aliens pay approximately $686 million in federal fuel taxes annually.[123]

Alcohol Taxes

We presume that illegal aliens, in general, will prefer beer or wine because it is less expensive than liquor and can generally be purchased in grocery and convenience stores. Furthermore, all individuals in the United States consume beer at a much higher rate than other alcoholic beverages. The general excise tax on beer was reduced from $18 per barrel (31 gallons) for beer to $16 per barrel in 2020.[124]

Studies indicate that alcohol consumption varies widely among immigrant groups, but that immigrants overall tend to drink less than native-born Americans.[125] However, the vast majority of illegal aliens are Hispanic, a demographic that consumes alcohol at a rate higher than the average American.[126] Because of the offsetting variances in terms of income, nativity, and race, we simply assume that illegal aliens likely consume alcohol at a rate relatively close to the rest of the country. This amounts to approximately $136 million in excise revenue generated by illegal alien alcohol purchases[127]

Tobacco Taxes

Studies of smokers have found an incidence of smokers among the foreign-born population to be about one-third lower than the native-born population.[128] Based on this data, it can be assumed that approximately 10.5 percent of illegal alien adults are smokers. The average smoker consumes approximately 75 packs of cigarettes per year.[129] The current federal excise tax on cigarettes is $1.01 per pack,[130] which means that illegal aliens are likely to pay approximately $111.5 million per year.

The cumulative total federal excise tax revenue from the illegal alien population for fuel, alcohol, and cigarettes, therefore, totals approximately $932,864,000 annually.

Net Federal Impact of Illegal Aliens

Federal Receipts from Illegal Aliens	
Income Taxes	$4,146,850,000
Social Security and Medicare Taxes	$19,527,768,000
Excise taxes	$932,864,000
Total Receipts	$24,607,482,000
Credits Given to Illegal Aliens	
ACTC	$5,400,000,000
EITC	$2,987,987,000
Total Credits	$8,387,987,000
Net Federal Receipts from Illegal Aliens	
Total Receipts	$24,607,482,000
Total Credits	$8,387,987,000
Net Federal Receipts from Illegal Aliens	$16,219,495,000
Net Federal Impact of Illegal Aliens	
Total Federal Outlays	$66,449,136,000
Net Federal Receipts	$16,219,495,000
Net Federal Fiscal Impact	$50,229,641,000

The Fiscal Burden of Illegal Immigration on United States Taxpayers 2023

State by State Costs of Illegal Immigration

State	# of Illegal Aliens	# of Illegal Aliens & their Kids	Adjusted Cost	Cost Per Alien to State Taxpayers	Cost Of Illegal Aliens To State Taxpayers	Cost of Illegal Aliens & their Kids to State Taxpayers
California	[illegible]	[illegible]	1.230	$ [illegible]	$ 22,821,800,942	$ [illegible]
Texas	2,226,000	2,992,000	0.836	$ 4,466	$ 9,942,111,305	$ 13,363,340,982
Florida	1,185,000	1,595,000	0.928	$ [illegible]	$ 5,972,788,206	$ 8,039,322,522
New York	1,081,000	1,453,000	1.212	$ 6,846	$ 7,400,654,942	$ 9,947,411,314
New Jersey	697,000	937,000	1.120	$ [illegible]	$ 3,920,584,853	$ 5,270,571,029
Illinois	628,000	845,000	0.898	$ 4,636	$ 2,911,654,025	$ 3,917,751,037
Georgia	514,000	692,000	0.832	$ 4,386	$ 2,254,644,675	$ 3,035,436,022
North Carolina	488,000	657,000	0.874	$ 4,781	$ 2,333,226,108	$ 3,141,249,083
Arizona	453,000	610,000	0.893	$ 5,230	$ 2,369,284,949	$ 3,190,427,856
Virginia	419,000	563,000	0.940	$ 5,038	$ 2,110,828,714	$ 2,836,268,654
Maryland	350,000	471,000	1.194	$ 6,123	$ 2,143,152,396	$ 2,884,070,796
Washington	346,000	466,000	0.981	$ 5,630	$ 1,947,937,290	$ 2,623,522,477
Nevada	293,000	395,000	0.939	$ [illegible]	$ 1,473,177,349	$ 1,986,024,071
Massachusetts	292,000	393,000	1.196	$ [illegible]	$ 2,159,721,305	$ 2,906,746,195
Colorado	278,000	374,000	1.016	$ 5,191	$ 1,443,024,697	$ 1,941,335,384
Pennsylvania	251,000	338,000	0.944	$ [illegible]	$ 1,216,181,625	$ 1,637,726,651
Michigan	185,000	248,000	0.827	$ 4,535	$ 837,055,573	$ 1,122,106,931
Oregon	181,000	243,000	1.177	$ 6,030	$ 1,091,347,377	$ 1,465,179,075
Connecticut	167,000	225,000	1.194	$ [illegible]	$ 950,901,447	$ 1,281,154,644
Tennessee	162,000	218,000	0.829	$ 4,456	$ 721,798,530	$ 971,309,133
Indiana	154,000	207,000	0.838	$ 4,451	$ 685,394,297	$ 921,276,750
Minnesota	140,000	187,000	0.922	$ 4,692	$ 656,934,062	$ 877,476,212
Utah	137,000	185,000	0.874	$ [illegible]	$ 689,499,518	$ 931,075,992
Oklahoma	136,000	183,000	0.824	$ 4,278	$ 581,796,674	$ 782,858,760
Ohio	132,000	178,000	0.857	$ 4,411	$ 582,270,353	$ 785,182,749
New Mexico	119,000	160,000	0.869	$ 4,628	$ 550,760,808	$ 740,518,733
South Carolina	117,000	157,000	0.929	$ 4,752	$ 555,936,741	$ 746,000,585
Wisconsin	111,000	150,000	0.891	$ [illegible]	$ 514,282,563	$ 694,976,436
Kansas	104,000	140,000	0.842	$ 4,308	$ 447,982,255	$ 603,053,035
Arkansas	97,000	131,000	0.813	$ 4,475	$ 434,102,463	$ 586,262,089
Louisiana	97,000	131,000	0.867	$ [illegible]	$ 447,503,641	$ 604,360,588
Alabama	91,000	122,000	0.838	$ 4,298	$ 391,086,456	$ 524,313,710
Missouri	77,000	104,000	0.833	$ 4,446	$ 342,317,218	$ 462,350,529
Kentucky	69,000	94,000	0.875	$ [illegible]	$ 315,944,133	$ 430,416,645
Hawaii	63,000	84,000	1.735	$ [illegible]	$ [illegible]	$ [illegible]
Idaho	62,000	83,000	0.839	$ [illegible]	$ 302,552,823	$ 405,030,392
Nebraska	56,000	75,000	0.866	$ 4,495	$ 251,721,107	$ 337,126,482
Iowa	55,000	74,000	0.853	$ [illegible]	$ 239,356,102	$ 322,042,755
Rhode Island	42,000	57,000	1.139	$ [illegible]	$ 230,445,009	$ 312,746,797
Washington DC	38,000	51,000	1.417	$ [illegible]	$ 287,622,055	$ 388,019,073
Delaware	35,000	47,000	0.948	$ [illegible]	$ 182,021,162	$ 244,426,416
Mississippi	34,000	45,000	0.786	$ [illegible]	$ 141,758,417	$ 187,621,434
Alaska	15,000	21,000	1.216	$ 6,192	$ 92,885,562	$ 130,039,073
New Hampshire	14,000	19,000	1.091	$ 5,659	$ 79,232,741	$ 107,530,149
Maine	12,000	16,000	1.063	$ 5,650	$ 31,807,322	$ 42,496,390
Vermont	10,000	13,000	1.116	$ 5,743	$ 32,335,129	$ 43,201,571
South Dakota	9,000	12,000	0.926	$ [illegible]	$ 26,695,927	$ 35,667,276
Wyoming	8,000	10,000	0.876	$ [illegible]	$ 25,445,858	$ 33,997,112
Montana	8,000	10,000	0.906	$ 5,196	$ 29,251,625	$ 39,061,833
North Dakota	6,000	9,000	0.918	$ [illegible]	$ 27,057,058	$ 36,149,768
West Virginia	6,000	9,000	0.881	$ [illegible]	$ [illegible]	$ [illegible]
	App. 15,516,000	App. 20,852,000			$85,801,109,086	$ 115,654,701,582

*totals may vary slightly from elsewhere in this report due to rounding.

Estimated Total State Taxes Collected from Illegal Aliens: $15,172,140,000

Total Net Cost of Illegal Immigration on States and Localities: $100,482,561,582

Part II: State and Local Expenditures and Receipts



State Education Costs

Education

Public School Expenditures **$70,401,000,000**

FAIR recently completed a comprehensive analysis of K-12 education costs associated with mass immigration into the United States entitled: *The Elephant in the Classroom: Mass Immigration Imposing Colossal Cost and Challenges on Public Education.*[131] This report also provided an estimate of the education costs associated with illegal immigration.

A significant number of the students in the United States are the children of illegal aliens. As of the 2021-2022 school year, FAIR estimates that 5.1 million public school students – roughly 6.5 percent of total U.S. enrollment – are the children of illegal aliens or are illegal aliens themselves.[132]

Most of the children from illegal alien households are designated as having Limited English Proficiency (LEP). It is estimated that only 7 percent of illegal alien households speak English as their primary language at home. Furthermore, only 25 percent of all illegal aliens can speak English at a proficient level.[133] LEP students cost roughly 15 percent more to educate than non-LEP students.[134]

Based on the same methodology from our comprehensive K-12 Education report, updated to account for the current illegal alien population, at least 3.8 million children of illegal aliens qualify as LEP,

costing taxpayers approximately $58.8 billion. Additionally, the education of non-LEP children of illegal aliens costs taxpayers approximately $16.9 billion, meaning it costs U.S. taxpayers approximately $75.7 billion to educate the children of illegal aliens.

The vast majority of this cost falls to the states via an unfunded mandate handed down from the U.S. Supreme Court in its ruling in *Plyler v. Doe*.[135] In fact, 98.9 percent of all LEP costs, and 92.1 percent of overall education funding, are borne by state and local governments.[136] Applying both of these totals to the aforementioned totals indicate that states shell out approximately $70.4 billion to pay for K-12 education costs associated with illegal immigration.

Post-Secondary Tuition Assistance **$2,789,760,000**

Title IV of the Higher Education Act precludes illegal aliens from receiving federal tuition grants, loans, or work assistance under the act, and requires recipients to be citizens, permanent residents, or be eligible for permanent residency.[137] In addition, a provision in the Illegal Alien Reform and Immigrant Responsibility Act of 1996 (IIRIRA) prevents states and their subdivisions from offering postsecondary education benefits, like in-state tuition, to illegal aliens on the basis of state residence if U.S. citizens residing in other states are not offered the same benefit.[138] However, largely in response to the efforts of illegal alien advocacy groups, eleven states began offering in-state tuition to illegal aliens by 2010 by arguing that illegals were charged in-state tuition on the basis of local high-school attendance and graduation rather than their state of residence. Three of those states offered scholarship assistance to students who are unlawfully present.

In the years since then, that number has increased significantly. According to the National Conference of State Legislators[139] and research into state legislation, there are now 24 states and the District of Columbia that fully allow illegal aliens to receive in-state tuition at their public universities. This means that significantly more illegal aliens are eligible for grants, state-funded scholarships and subsidized loans, driving up higher education costs for states. Several other states permit illegal aliens to receive in-state tuition only in portions of their university system or restrict in-state tuition to illegals with DACA status.

It is often the case in states with no legislation on the matter that access to in-state tuition is granted under a "don't-ask-don't-tell" policy, with university administrations simply declining to solicit any information on a student's immigration status. In states that do not offer in-state tuition to illegal aliens, it is also likely that many unlawfully present students still receive in-state tuition rates because few states verify the immigration status of enrollees by using the Systematic Alien Verification for Entitlements (SAVE) database.

Several of the states that allow illegal aliens to pay in-state tuition have also extended state-funded financial aid to illegal aliens to counterbalance the ban on federal funding. Of the six most populous

states, California, Texas, New York, and Illinois allow in-state tuition and state funding for illegal alien college students. These states spend nearly $100 million annually supporting illegal alien students with taxpayer funds, and many university administrators in California even bemoan the fact that illegal students aren't using all the aid the government provides.[140]

An increasingly hospitable political climate and the continuation of DACA have led to the steep growth in the numbers of illegal aliens receiving post-secondary education in the United States. Community college systems are significant, but under-referenced, contributors to this growth, as the vast majority (60%) of illegal alien post-secondary students attend community colleges rather than four-year universities. Community colleges, like four-year universities, charge out-of-state tuition rates and allow students to receive state education aid, representing significant costs to the taxpayer when illegal aliens are allowed to access benefits that Americans from other states cannot.

Enrollment data for illegal aliens in public post-secondary schools is sparse, especially in states that do not explicitly bar or permit illegal aliens to receive benefits. To estimate the cost to taxpayers of granting in-state tuition to illegal aliens, FAIR first must estimate how many illegal aliens are enrolled in post-secondary education. By extrapolating from known enrollment values for illegal alien students in certain states, as well as government data on the makeup of the illegal alien population and their choices in higher education, FAIR can determine the size of the illegal alien post-secondary population and their distribution among states. This population, as well as the costs associated with it, has increased significantly since FAIR's last cost study. FAIR then estimates the cost of enrollment and aid based on population, state-level costs, and the proportions of students attending different categories of university.

Significant costs come from both the difference between in-state and out-of-state tuition and from financial aid given to illegal alien students where allowed. Because of their low average family incomes, illegal aliens tend to receive higher amounts of state financial aid than citizen or visa-holder students in states that allow aid. FAIR is able to account for the majority of students who do not hold DACA status but are still permitted to pay in-state tuition in many states. We can also determine the significant increases in financial aid offered to illegal alien students by states like New York and Illinois since the last version of this study was issued. However, these costs are still likely to be an understatement. Even in states that do not permit in-state tuition or financial aid to illegal alien students, fraud, document theft or misuse, or simple "don't ask, don't tell" policies certainly allow at least some illegal aliens to obtain in-state benefits in those states.



The states that bear the greatest fiscal impact from their in-state tuition benefit to illegal aliens are California ($816M), Texas

($459M), Florida ($228M), New York ($226M), and Illinois ($134M). These states, 5 of the 6 most populous, account for two-thirds of the total cost of approximately $2.789 billion that illegal aliens cost in in-state tuition and financial aid. All of these states have large populations of illegal aliens, and in all but Florida, state laws actively permit illegal aliens to take advantage of the financial aid the state offers on the basis of need.

Total State Educational Expenditures	
K-12 Public School	$70,401,000,000
Post-Secondary Tuition Losses/Financial Aid	$2,879,760,000
Total Educational Expenditures	$73,280,760,000



State Medical Costs

State Medical Costs

Illegal aliens access taxpayer-supported medical assistance at the state level in several ways. First, the Emergency Medical Treatment and Labor Act (EMTALA) of 1986 requires that public hospitals provide emergency medical assistance regardless of the patient's ability to pay. Thus, low-income individuals lacking health insurance, including illegal aliens, often rely on hospital emergency rooms as a source of free or low-cost healthcare. This abuse of EMTALA leads to significant hospital operating costs, because EMTALA does not reimburse hospitals for these services.

EMTALA also requires that hospitals provide care for indigent mothers who give birth in emergency rooms regardless of their ability to pay, so many illegal aliens rely on emergency care facilities for child delivery as well. EMTALA even covers delivery costs for mothers who deliberately cross the border specifically for the purpose of accessing U.S. hospitals, adding further to the expenses imposed on healthcare providers. Tens of thousands of women come to the United States with the express intent of giving birth every year, including thousands of illegal aliens.[141] In addition to taking advantage of better healthcare facilities, migrants engage in this "birth tourism" primarily to ensure that their child is born a U.S. citizen.[142]

While hospitals near the border bear the brunt of this financial burden, states far from the Southwest

Border are feeling the strain as well. New York City provides a powerful illustration of the fiscal costs imposed on local taxpayers by furnishing free healthcare to illegal aliens:

"At an April [2016] press conference, Dr. Ram Ramu, [a New York City health official], said that caring for [illegal aliens] consumes about one-third of his $7.6 billion annual budget. Rounding down, that means that $2.5 billion — of which the city is picking up an increasingly large chunk every year, as state and federal aid dries up — goes toward providing health care to illegal aliens in New York."[143]

Although it's unlawful to utilize federal funds to provide non-emergency healthcare for most illegal aliens, some states and local governments use their own funds to offer coverage to illegal alien children. For example, the "Healthy Kids" program in San Francisco covers uninsured children under the age of 19, including illegal alien children. Similarly, the "All Kids" program in Illinois covers all children under the age of 19 whose families meet program income requirements, regardless of immigration status.[144]

Additionally, a number of states are expanding other statewide health benefits to illegal aliens. For example, California has expanded Medi-Cal to cover many illegal aliens. Washington State is slated to start offering coverage to illegal aliens in 2023.[145] The costs of these programs are covered later in this section.

Medicaid births **$937,863,000**

States pay a matching share for all Medicaid births, as mentioned in the federal portion of this cost study. For most Medicaid expenses, this comes out to nearly 63 percent of the total cost of this program.[146] After subtracting costs covered by health insurance, for those illegal aliens who have it, the total reported cost of Medicaid birth for illegal aliens comes out to $2.53 billion, with $1.6 billion covered by the federal government. This leaves the states with a burden of $937,863,000. (See the federal portion of this report for further details on this issue.)

Uncompensated Medical Expenses **$4,501,175,000**

As noted earlier, unpaid medical expenses incurred by uninsured illegal aliens typically fall to the states. Most of these come from unpaid visits to emergency rooms. The Kaiser Family Foundation estimated that, in 2017, states paid for $11.9 billion in total uninsured medical costs, which comes out to approximately $14.45 billion in 2022 dollars.[147]

Only about 47 percent of illegal aliens have health insurance, leaving about 8.2 million illegal aliens uninsured.[148] Many of those who do have health insurance do not have comprehensive plans, leaving them uncovered for certain ailments. In the first quarter of 2022, according to DHHS, there were about 26.4 million uninsured people in America.[149] Since the implementation of the ACA, illegal aliens constitute a growing share - now approximately 31 percent - of the overall uninsured population. That

indicates a total state-level expenditure of approximately $4.5 billion for uncompensated medical expenses incurred by those illegally present.

Improper Medicaid Payments **$4,696,983,000**

As described in the federal expenditures section, there is significant evidence of fraudulent use of Medicaid by illegal aliens. When we calculate the shared costs between states and the federal government, the amount paid by states is approximately $4.7 billion.[150] (See the federal portion of this report for further commentary on this issue and an explanation of our methodology.)

Medicaid for U.S.-born Children of Illegal Aliens **$3,162,623,000**

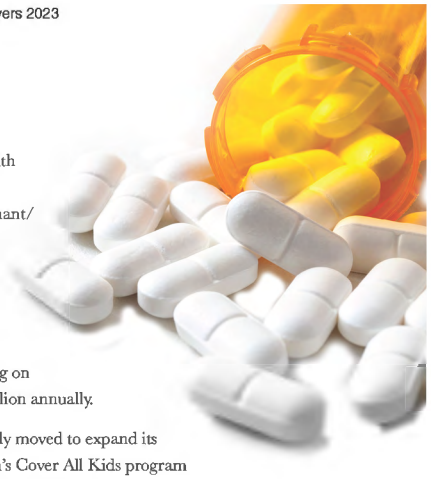
Sixty-three percent of the Medicaid costs for U.S.-born children of illegal aliens are shouldered by the federal government. That amounts to approximately $5.4 billion of the total $8.5 billion cost, leaving the states with a cost of $3.16 billion.[151] (See the federal portion of this report for further commentary on this issue and an explanation of our methodology.)

Medi-Cal Expansion **$4,802,094,000**

Beginning in May 2022, California expanded access to Medi-Cal, the state's Medicaid program, to all illegal alien adults over 50. As of the end of reporting year 2022, this policy provides free state-funded medical care to more than 304,000 illegal aliens.[152] This drastic change follows a significant expansion enacted in 2020 that provided full Medi-Cal coverage to illegal aliens aged 19-25, which added state-funded coverage for at least another 116,000 illegal aliens.[153] Because another (at least) 142,000 income-eligible illegal alien children under 18 were already included in the Medi-Cal system,[154] California effectively provides healthcare to all illegal aliens under 26 or over 49.

This additional coverage represents a significant burden on the state's finances, reflecting especially high demands that older illegal aliens place on the healthcare system.[155] After accounting for average Medi-Cal expenditures and estimates of the proportion of California's population with a disability,[156] the total spending on the expansion for illegal aliens over 50 in California accounts for nearly $3.7 billion. The previous expansion of Medi-Cal to illegal alien adults aged 19-25 added around $750 million, while existing Medi-Cal spending on illegal immigrant minors totals around $360 million.

It must be noted that the government of California, led by Governor Gavin Newsom, has proposed an expansion of Medi-Cal coverage to all income-eligible illegal aliens beginning after January 1, 2024. The government of California itself estimates that this expansion would cost approximately $819 million to enact, and reach a full annual expenditure of $2.7 billion in the future.[157] If enacted, this total would be in addition to the current costs. Because federal aid matching funds cannot be spent on programs that only benefit illegal aliens, California taxpayers are footing this entire bill, and will be on the hook for all future expansions of the program.



Other State Programs
$526,098,000

Like California, other states have expanded various health insurance coverage to illegal aliens to varying degrees. Generally, this coverage is restricted to children or pregnant/ postpartum women. However, Illinois has taken after California in progressively expanding state-funded coverage to older illegal aliens, with any illegal alien over the age of 42 now able to enroll in state-funded care in addition to all minors. State statistics on the expansion program[158] indicate that total annual spending on these covered populations clocks in at just over $460 million annually.

As of mid-2022, the state of Oregon has also aggressively moved to expand its state-funded Medicaid coverage to illegal aliens. Oregon's Cover All Kids program funds medical services for illegal alien children under 19, at a conservatively estimated annual cost of around $15.2 million based on state data,[159] and the state legislature has authorized $50 million in annual spending on health coverage for illegal alien adults.[160] Several other states like Vermont, Rhode Island, and Maine have established programs that provide health insurance to illegal aliens under 19, although due to the small population size of these states and the difficulty of finding concrete data the costs can be hard to estimate. Nevertheless, these states do incur costs in the millions of dollars annually by operating these programs, which cannot be federally funded.

The coming years are certain to see additional billions in state taxpayer dollars spent on healthcare for illegal aliens, none of which is reimbursable by the federal government. In 2022, multiple states adopted legislation expanding illegal aliens' access to medical benefit programs at taxpayer expense. The largest of these expansions will be in New York State, where full state-funded Medicaid coverage was approved in the 2022 state budget and will be provided to illegal aliens 65 or older once implemented.[161] Coverage for this age group, as California and Illinois have proven, is extremely expensive. With Medicaid costing over $20,000 a year per senior enrollee in New York,[162] the fiscal impact of this expansion will cost billions once fully in place. Other relatively populous states like Colorado, Connecticut, New Jersey, and Washington also have programs set to go into effect in the coming years that will expand coverage to certain categories of illegal aliens.

Additionally, some other services are made available to illegal aliens through Medicaid programs in some states. For example, in New York, Medicaid for Emergency Care is used to provide chemotherapy and radiation to uninsured or underinsured illegal aliens with cancer. In twelve states - including New

York, California, North Carolina, Colorado, Illinois, and Washington State - it can be used to provide outpatient dialysis for illegal aliens. These are medically important procedures, but they impose a heavy burden on taxpayers who are attempting to deal with the increasing costs of providing healthcare for themselves and their dependents. Since detailed information is not made available on the extent to which illegal aliens are using these programs, we cannot affix a cost estimate to them.

Total State Medical Expenditures	
Medicaid births	$937,863,000
Uncompensated Medical Expenses	$4,501,175,000
Improper Medicaid Payouts	$4,696,983,000
Medicaid for Citizen Children of Illegal Alien	$3,162,623,000
Medi-Cal Expansion	$4,802,094,000
Other State Programs	$526,098,000
Total Medical Expenditures	$18,626,836,000



Administration of Justice

Administration of Justice

Immigration enforcement is a completely federal responsibility — at least, that is the argument of those who oppose state and local efforts to cooperate with the Department of Homeland Security. But the costly truth is that state and local governments face extensive criminal justice expenditures related to the presence of illegal aliens.

These costs may be generally grouped into three categories: (1) Policing; (2) Judicial; and (3) Corrections.

Policing costs refer to the fiscal costs of police operations in response to criminal activity by illegal aliens, especially in municipalities where gang activity and drug trafficking is rampant.

Judicial costs refer to the cost of operating the judicial system for illegal aliens. These costs include providing pre-trial detention, court hearings, and probation of illegal aliens who stand accused of criminal offenses. These costs are significantly higher than average because of the frequent need for bilingual court services programs in order to ensure that due process requirements are met.

Corrections costs incorporate the cost to states and local jurisdictions for the incarceration of illegal alien criminals. The federal government operates a program to help defray the state and local costs of incarceration of illegal aliens, SCAAP (see Part I of this report). However, that program only covers a fraction of the expenses, around 2-5% of the costs reported by jurisdictions who apply for and win

grants.[163]

The National Institute of Corrections provides estimates of the cost per prisoner expended by each state.[164] We use this data and assign costs for each state proportionate to the size of the illegal and deportable alien population reported by the local authorities to the Bureau of Justice Statistics.[165] This method, to varying degrees, understates these expenditures because not all jurisdictions that imprison illegal aliens participate in the SCAAP program, meaning that many states face expenditures proportional to the size of their criminal alien population, but are not reflected in federal compensation calculations. We estimate non-participating jurisdictions' costs by their total illegal alien population and the average state correctional expenditure. Our estimations are listed below as an aggregate for all 50 states:

Policing	$8,952,291,000
Judicial	$3,720,668,000
Corrections	$6,213,721,000

As is reflected in these figures, correctional expenses make up approximately a third of the total cost of illegal aliens in this section, with police expenses comprising nearly half of the total and judicial expenses making up the rest.[166]

In FY 2020, the most current and complete year of statistics available, there was a sudden and significant decrease in the number of criminal aliens in custody due to the COVID-19 pandemic.[167] The number of criminal aliens in federal custody fell by 24% from 2019, and similar declines were registered in most states due to COVID-driven lenient release policies in jails and prisons across the country.[168] Nevertheless, an examination of state and local budgets indicate that, as a general rule, staffing costs did not appreciably decrease because of the temporary nature of the disruptions and rising personnel expenses. Costs are anticipated to increase further as the custodial population renormalizes in the coming years.

State Border Security Costs **$3,135,000,000**

In addition to costs by ICE, CBP, the National Guard, etc., some border states also allocate money to their own law enforcement agencies to combat the public safety and national security threats associated with illegal migration. These costs are only necessary due to the federal government failing to properly secure the border. Some states even fund the deployment of National Guard Troops to support U.S. CBP.

The vast majority of state border security funding efforts come from Texas. For the past two legislative sessions, the state has reinforced its dedication to combat illegal immigration and the drug trade epidemic

until the federal government effectively addresses these issues. Arizona's approximately $20 million border task force, one of the components of its greatly increased border funding, is also a relatively new endeavor with the same goal.

Listed below are the states that share a border with Mexico, along with the portion of their state budget that is *officially* dedicated to combating illegal immigration:

Texas: $2.589 billion — The Texas Legislature meets every two years. Spending in the current legislative cycle is approximately $4.5 billion, reflecting massive increases in illegal border crossings and state efforts to compensate for inadequate federal enforcement.[169] The Texas government has greatly increased spending on public safety in recent years and recently announced a further $339 million increase in border funding outside the normal legislative appropriations cycle.[170] Meanwhile, the federal government has so far ignored Texas' requests for reimbursement of its funds spent on border security. Therefore, the entirety of these costs is being paid for by state taxpayers.

New Mexico: *Negligible* — Any state funds spent on border security are not specifically tracked or reflected in state or legislative budget records. Thus, while the New Mexico government does not appear to specifically designate any significant amount of state resources directly to border security measures, as its border is short and has difficult terrain. Of course, this doesn't mean that state and local law enforcement officers aren't expending additional effort and resources to combat the impact of illegal immigration.

Arizona: $546 million — The Arizona government, like Texas, has drastically increased appropriations in recent years in response to a lack of federal action to secure the border. Arizona's H.B. 2317 recently appropriated $335 million for state-level border wall construction and physical infrastructure to reinforce the border. Total budgetary expenditures on border security, including dedicated law enforcement and facilities construction, are $546 million.[171]

California: *Negligible* — The California government does not allocate funding toward border security. On the contrary, the state government spent considerable time and expense litigating the Trump Administration's policies to improve border security. However, California benefits from being the first state in the U.S. to have its international border reinforced by wall. This effort began in the 1990s, when the Federal government constructed, and has since maintained, a wall along the busiest parts of California's border that has been extremely successful in preventing illegal immigration and drug/human trafficking directly into the state. Similar walls across the entire Southern border would quickly pay for themselves, and drastically reduce the need for states to divert tax dollars to fund border security measures.

The entirety of these costs are directly attributable to the failure of the federal government to secure the border and remove incentives that encourage illegal immigration. It's also important to note that the failure of the federal government to secure our borders has also resulted in enormous costs not directly reflected in state and local budgets, especially in small communities located near the border.

Total State Administration of Justice Expenditures	
Policing	$8,952,291,000
Judicial	$3,720,668,000
Corrections	$6,213,721,000
State Border	$3,135,000,000
Total	$22,021,680,000
SCAAP funds from Federal Government	-$210,240,000
Net Justice Expenditures	$21,811,440,000



State Welfare Programs

State Welfare Programs

As noted in the Federal portion of this study, illegal aliens (with a few exceptions) are not considered "qualified aliens" pursuant to Title IV of the PRWORA of 1996.[172] Therefore, most are ineligible state and local public benefits which are supplemented by federal funds, as stated in the act. However, the fact that most medical benefits exclude the majority of illegal aliens does not mean they receive no taxpayer-supported services.

Illegal aliens with certain designations, such as TPS status or recipients of parole with a set term of at least one year, are able to lawfully collect certain state benefits, even if they are supplemented by federal funds. Moreover, PRWORA contains a loophole that undermines its own declared intent by allowing states to extend state welfare benefits "through the enactment of a State law … which affirmatively provides for such eligibility" so long as the funding is entirely sourced at the state level.[173] This creates a pull factor at the state level and saddles state taxpayers with additional costs.

In addition to the exceptions granted under PRWORA, the U.S.-born children of illegal aliens are eligible for virtually all state programs granted to U.S. citizens, granted they meet other eligibility criteria. There are also many recipients of welfare who obtain it by fraud.

Child Care and Development Fund (CCDF) **$171,033,000**

In 2022, the state share of CCDF funding was $1.8 billion. These costs were divided almost equally into state "Maintenance of Effort" programs and state-share matching funds.[174]

As laid out in the federal section, FAIR estimates that 9.4 percent of the CCDF caseload consists of the children of illegal aliens. Applying that proportion to the state's share of CCDF costs results in approximately $171 million attributable to illegal immigration. For more details on the CCDF program and how illegal aliens utilize the program, see our analysis in the federal section of this report.

Temporary Assistance to Needy Families (TANF) **$1,432,105,000**

TANF programs vary widely by state, which presents difficulties in estimating the amount of TANF funding attributable to the presence of illegal aliens and their citizen children who qualify for the program. As previously indicated in the federal portion of this report, however, we estimate that 9.4 percent of the TANF caseload is made up of the children of illegal aliens.

Overall state spending on TANF programs amounted to about $15.2 billion in FY 2021.[175] This means that approximately $1.43 billion of those funds are the result of illegal immigration.

Meals in Schools **$376,556,000**

The federal free and reduced price meal program for K-12 students has a state matching requirement. State expenditures are much lower than they are at the federal level. To receive federal funding for subsidized school lunch programs, states must contribute matching funds equal to 30 percent of the federal funds they received in 1980. Because the matching funds requirements are frozen at 1980 levels, state required contributions are often very small relative to the federal reimbursement level.



The 1980 total cost to the federal government was approximately $3.2 billion,[176] meaning that states are required to contribute at least $960 million. As noted earlier, FAIR estimates that almost 8.3 percent of participants in this program are illegal aliens or the children of illegal aliens, meaning the total current state burden in this program would be a minimum of $79.35 million.

The USDA has indicated in the past that federal funds and required matching state funds fall about 9 percent short of the full cost of this program, leaving the rest to local school districts.[177] The budgeted cost of this program was $19.7 billion during the pre-pandemic year of 2019 (this combines the federal expenditures of $18.8 billion and the $960 million in required state contributions), implying a shortfall of $1.77 billion. The illegal alien-attributable share of this is $147 million. With the budgeted state share attributable to illegal immigration, the total comes out to slightly over $226 million.

Moreover, to fully account for the costs of providing free or low-price school meals to the children of illegal aliens (both foreign and U.S.-born) we must consider recent temporary funding measures and account for more permanent spending which began during the COVID-19 pandemic. As mentioned in the federal section, from 2020 to 2022 federal spending was significantly, but temporarily, increased to allow all pupils to receive free school lunches and breakfasts. Once these benefits expired as of the 2022-2023 school year, some states decided to either extend free school meals using their own funds (e.g., Massachusetts, Nevada, Vermont) or permanently implement state-funded universal free school meals (California, Colorado, Maine).[178] California committed to allocating $650 million annually to this program; Colorado's program costs $100 million per year (and is being funded by limiting state income tax deductions for households making more than $300,000 a year); and Maine's program is estimated to cost $34 million annually.[179] FAIR estimates that the additional costs of these programs attributable to the children of illegal aliens amount to $150 million annually.[180] In total, the state-level burden of illegal aliens on school meal funds amounts to $376.6 million.

Supplemental Security Income (SSI) and other Cash-Related Welfare Programs

In addition to federal funding and federally-administered state supplements, most states also administer their own supplemental SSI payments. Delaware, the District of Columbia, Iowa, Pennsylvania, and Rhode Island pay out both Social-Security-Administration-administered state supplements as well as their own.[181] Because these state-administered programs vary from state to state, and many of them do not release ample budgetary information, FAIR does not endeavor to estimate what proportion of these funds are attributable to illegal immigration.

Total State Welfare Expenditures	
Child Care and Development Fund (CCDF)	$171,033,000
Temporary Assistance to Needy Families (TANF)	$1,432,105,000
Meals in Schools	$376,556,000
Total Welfare Expenditures	$1,979,694,000



Total State Expenditures

Total State Expenditures

The total fiscal burden of illegal immigration on state taxpayers has now reached a staggering $115.6 billion, which is 30 percent more than it was in 2017. The primary reasons for this, aside from a rapid increase in the illegal alien population, are that a number of states have opted to expand access to state welfare, education, and medical programs to illegal aliens. These expansions have led to taxpayers paying tens of billions in additional funding to cover these costs.

Concerningly, as will be seen in the following section, the taxes paid by illegal aliens to state and local governments fall far short of making up for the numerous additional state-funded benefits they are receiving. Moreover, with many states set to begin offering even more benefits to illegal aliens, as mentioned previously, these costs are only expected to increase even further.

Total State and Local Expenditures	
Total Education Expenditures	$73,190,760,000
Total Medical Expenditures	$21,811,439,000
Total Administration of Justice Costs	$18,626,836,000
Total Welfare Expenditure	$1,979,694,000
State and Local Total	$115,608,729,000



State and Local Taxes Collected

State and Local Taxes Collected

As with federal costs, state and local costs are offset - to some degree - by the taxes illegal aliens pay. As noted in the Federal taxes portion of this section, proponents of illegal immigration argue that the taxes paid by illegal aliens result in a net boon to state and local coffers. However, this is a spurious argument. Evidence shows that the tax payments made by illegal aliens fall far short of covering the costs of the services they consume.

It is also important to note that calling illegal alien tax payments a net receipt is a mischaracterization. The overall wage depression inflicted on local labor markets by the presence of large numbers of illegal aliens willing to work for less than market rates has far-reaching fiscal implications that are often not quantified on average balance sheets. Low-wage workers generally access more government benefits than higher-paid employees. Furthermore, illegal aliens also tend to remit large portions of their earnings back to their home countries, and thus less money is incorporated back into local economies and less is paid in local sales and excise taxes. However, because this study looks at the fiscal impacts of illegal immigration, and tax collections are a fiscal offset, we do our best to estimate how much of the fiscal costs borne by taxpayers are reduced by taxes paid by illegal aliens.

Illegal aliens are not typical taxpayers. First, the large percentage of illegal aliens who work in the underground economy avoid paying any income tax at all. Those that do work in the formal economy often receive back more than they pay to the federal government through refundable tax credit programs. Finally, the average earnings of illegal alien households are considerably lower than earnings of legal aliens and native-born workers, thus they typically fall into the lowest tax brackets.

Disposable Income Profile of Illegal Aliens at the State and Local Level

FAIR estimates there are about 7.9 million illegal aliens participating in the aboveground economy, with approximately 7.5 million currently employed.[182] As noted previously, the average household headed by an illegal alien earns approximately $40,800 annually. However, those working in the underground economy are estimated to earn far less.

Since a significant portion of state and local taxes are levied on spending instead of income, in forms such as sales and excise taxes, it's important to recognize the negative impact of remittances on the amount of state and local taxes collected. The term "remittances" in the context of illegal immigration refers to money earned in the United States that is transferred to relatives, friends or business associates who still live abroad.[183] A 2019 FAIR study estimates that the average illegal alien remits approximately 20 percent of their gross income out of the country. This comes out to approximately $8,160.[184]

Remittances by both lawful and illegal aliens harm state and local governments, as they lower overall disposable income, local spending, and related revenue. Despite this lower disposable income, illegal aliens still often use state and local services that rely on spending-based taxation at rates similar to native-born citizens. These include services such as fire and police assistance, public roads, other public transportation infrastructure, and public schools.

Currently, only Oklahoma has a "remittance tax," which places a $5 or 1 percent fee (whichever is greater) on all outgoing, out-of-state money transfers.[185] This tax helps the state recoup lost tax dollars stemming from income sent out of the state primarily by immigrants, including illegal aliens. It is estimated that if a similar tax were instituted nationwide, the federal and/or state governments could recoup more than $2 billion in lost tax revenue from migrants remitting their income to other countries.[186]

Factoring in remittances, we construct the disposable income profiles of illegal aliens by first estimating their incomes in each state. We then account for the sum of federal taxes paid versus credits received,[187] as well as the amount of state income taxes paid (in states that have a state income tax) versus credits received. Finally, other state taxes, such as property tax, must be considered. Based on the methodologies detailed in the Federal taxes portion of this study, as well as the forthcoming sections on specific state taxes, the average illegal alien has a disposable income of approximately $28,144 annually.

Income Tax Receipts **$5,728,653,000**

As noted in the Federal portion of this cost study, most illegal alien households will have little income tax liability, if any at all, and millions more avoid liability by working in the "underground economy." For the most part, this holds true at the state level as well.

Nearly 30 percent of all illegal aliens in the United States reside within the nine states without a state income tax: Texas, Florida, Nevada, Washington, Wyoming, Tennessee, New Hampshire (which only taxes dividends and interest), Alaska, and South Dakota.[188] In California, where approximately 21 percent of the nation's illegal aliens reside, the tax bracket for those making the estimated wage for illegal alien households in the state is a measly 2 percent.

In addition, FAIR estimates that 25 percent of all illegal alien households work in the underground market. This means that a significant majority of illegal aliens will pay little or no state income tax.

FAIR estimates the total amount of state income taxes paid by illegal aliens by adjusting the nationwide average income per illegal alien household higher or lower for each state based on how much the average income varies from the overall national average.[189] We then analyze the tax rates for each of these states, minus standard deductions, to determine the effective average tax bracket for illegal alien households in each state.[190] After using this data to determine the average amount paid per household, we multiply that number by the estimated total number of tax-paying illegal alien households employed in the aboveground economy.[191] Nationwide, that total comes out to approximately $5.7 billion.

Property Tax Receipts **$3,152,993,000**

Families who own residences are subject to property taxes. Individuals living in rental property do not pay property taxes directly, although their monthly rent is likely calculated to subsidize a portion of their landlord's property taxes.

For states that host the largest number of illegal aliens, property taxes hover right under the 1 percent mark. In addition, in many states like Texas and Florida, property can be purchased at prices considerably lower than the national average.

Of course, illegal alien households are far less likely to be homeowners than U.S. citizens. According to the Pew Research Center, illegal alien households are half as likely to own property as native-born households.[192] Based on data from the 2020 ACS, approximately 70 percent of all households owned their own property. This means that, most likely, about 35 percent of illegal alien households own property.[193] According to the Wells Fargo Home Affordability Calculator,[194] an illegal alien household making the average wage in a city with an average cost of living index would be able to afford a residence costing

no more than $150,000. Using this as the mean home value and an average annual property tax of 0.90 percent, it can be estimated that illegal aliens pay approximately $3.2 billion annually in property taxes.

State Fuel Taxes **$1,440,000,000**

The average state fuel tax for the United States comes out to 38.69 cents per gallon, according to the American Petroleum Institute.[195] Average fuel taxes have remained significantly more stable than the national gas price average, which currently fluctuates around $3 per gallon, excluding a significant drop during much of 2020 due to the COVID-19 pandemic. The overall average price for unleaded gasoline at the end of 2022 was approximately $3.20 per gallon.[196] As noted earlier in this report, the average American purchased approximately 592 gallons of gasoline in 2021, and we estimate that the average illegal alien purchased approximately 414 gallons under the assumption that they drive somewhat less on average than U.S. citizens and lawfully present migrants.

Based on these calculations, the average illegal alien driver spends somewhere around $1,325 annually on fuel, $160 of which would go to state-level fuel taxes. Based on our earlier estimate that there are about 9 million illegal alien drivers in the United States, this means that they contribute approximately $1.4 billion in state fuel taxes. This considerable increase since our last report is due to the fact that an increasing number of illegal aliens are comfortable driving due to the significant increase in the number of states that offer driver's licenses to illegal aliens.

State Sales and Excise Tax Receipts
$4,850,494,000

To calculate state sales and excise tax receipts, we take an alien's total disposable income, then determine what percentage of that will be spent on goods and services that are subject to the tax. We then estimate the overall average sales and excise tax rate for the average illegal alien based on their population distribution and the applicable tax rates in each state.



In almost every state, staple groceries and most other food items are exempt from sales tax. According to the USDA, the average family spent approximately 10.3 percent of their disposable personal income on groceries in 2021.[197] For

illegal alien households, this amounts to $2,896 annually. However, due to their lower average income, it can be assumed that they likely spend a higher proportion of their income on groceries.

Fuel and housing taxes are included separately in this report, so spending on those categories should be subtracted as well. The average illegal alien spends about $1,325 annually on fuel, as mentioned previously. The Bureau of Labor Statistics (BLS) estimates that the average American family spends 25.9 percent of their gross income on housing.[198] This totals approximately $10,567 for illegal aliens. Again, since their incomes are significantly lower than the average American citizen, it's almost certain that housing costs account for a greater proportion of their budget.

There are other categories that may be exempt from sales tax in certain states. For example, many digital items such as streaming services, e-books, and digital copies of music and movies are exempt in many states. Other states exempt certain categories of clothing from sales tax. In addition, many states have sales tax holidays. It is difficult to estimate how much illegal aliens are spending on these items.

Based on the above analysis, we believe a safe assumption is that no more than 30 percent of the disposable income from illegal alien households goes toward purchasing goods and services that are subject to sales tax. So, based on the population distribution of illegal aliens,[199] their average income, and the corresponding tax rates in each state,[200] we estimate that illegal aliens pay a total of $4.9 billion annually in sales and excise tax nationwide.[201]



Net State Impact of Illegal Aliens

Total State Tax Receiptss	
Income Tax Receipts	$5,728,653,000
Property Tax Receipts	$3,152,993,000
Fuel Tax Receipts	$1,440,000,000
Sales and Excise Tax Receipts	$4,850,494,000
Total State Taxes Paid	$15,172,140,000

The state tax payments made by illegal aliens fall far short of the costs incurred by their presence, as detailed below. These figures negate the argument that illegal aliens represent a net economic benefit to the United States.

Total State and Local Expenditures	$115,608,729,000
Total State and Local Tax Receipts	-$15,172,140,000
Net State and Local Fiscal Impact	$100,436,589,000

Part III: Total Federal and State Fiscal Outlays

At the federal, state, and local levels, taxpayers shell out approximately $182 billion to cover the costs incurred by the presence of more than 15.5 million illegal aliens, and about 5.3 million citizen children of illegal aliens. That amounts to a tax burden of approximately $8,730 per illegal alien family member. These figures are before taxes paid by illegal aliens are factored in. The totals with taxes factored in are as follows:

Total Expenditures	
Total Federal Expenditures	$66,449,136,000
Total State and Local Expenditures	$115,608,729,000
Total National Expenditures	$182,057,865,000

Net Tax Contributions	
Net Federal Taxes Paid	$16,219,495,000
Net State and Local Taxes Paid	$15,172,140,000
Total Net Tax Contributions	$31,391,635,000

Total Cost of Illegal Immigration	
Total National Expenditures	$182,057,865,000
Minus Total Tax Contributions	$31,391,635,000

Total Fiscal Cost of Illegal Immigration on U.S. Taxpayers:	**$150,666,230,000**

Endnotes

[1] Matthew O'Brien, Spencer Raley, Jack Martin, "The Fiscal Burden of Illegal Immigration On United States Taxpayers (2017)", Federation for American Immigration Reform (**FAIR**), September 2017, https://www.fairus.org/issue/publications-resources/fiscal-burden-illegal-immigration-united-states-taxpayers

[2] "Gross Domestic Product by State and Personal Income by State, 3rd Quarter 2022", Bureau of Economic Analysis, U.S. Department of Commerce, https://www.bea.gov/sites/default/files/2022-12/stgdppi3q22.pdf

[3] "Small Migrant Populations, Huge Impacts", FAIR, https://www.fairus.org/sites/default/files/2020-01/Low-Immigration-States_web.pdf

[4] Total number of U.S. taxpayers is based on the following report: Erica York, "Summary of the Latest Federal Income Tax Data, 2023 Update," Tax Foundation, https://taxfoundation.org/publications/latest-federal-income-tax-data/

[5] The federal government does this by releasing illegal aliens into the country under the expanded use of humanitarian parole, and by expanding programs such as Temporary Protected Status. Both of these programs consider illegal aliens to be "qualified aliens," which expands their access to many federal welfare and medical programs.

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We used a similar methodology on the federally-administered state supplements in California, Delaware, the District of Columbia, Hawaii, Iowa, Michigan, Montana, Nevada, New Jersey, Pennsylvania, Rhode Island, and Vermont, taking into account that the illegal alien population (including U.S.-born children) accounts for 32 percent of the total national illegal alien (plus children) population

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[117] Since the federal government continues to delay the implementation of REAL ID (which would bar most illegal aliens from flying), and an increasing number of states offer driver's licenses to illegal aliens, it's likely that a growing number of illegal aliens are now using air travel as a means to move around the country. However, since most illegal aliens are low-income earners, it is still unlikely that a large portion of them can regularly afford to travel by air, meaning that their tax contributions (currently 7.5 percent of the base ticket cost) would be relatively limited.

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[133] "Profile of the Unauthorized Population: United States", Migration Policy Institute, https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US

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Chairman ARRINGTON. And now we are adjourned. Thank you.
[Whereupon, at 12:39 p.m., the Committee was adjourned.]

Questions for the Record from
REPRESENTATIVE ADRIANO ESPAILLAT

Full Committee Hearing
"The Cost of the Border Crisis"
Wednesday, May 8, 2024
10:00AM

1) For Mr. David Bier Director of Immigration Studies, Cato Institute

Mr. Bier, my colleagues and I introduced HR *3599 -- DIGNIDAD (Dignity) Act* which would decrease current barriers to legal immigration and increase investments in the technological infrastructure at ports of entry. How do you think comprehensive immigration reform bills like Dignity Act that address holes within our immigration system will affect the nation's economic outlook?

2) Mr. David Bier, Director of Immigration Studies, Cato Institute

Mr. Bier, it is estimated that over two million immigrants in the US experience underemployment and unemployment. How can investing in workforce programs that help immigrants find use for their foreign credentials, like a medical license from their home country, help grow the economy?

3) Mr. David Bier, Director of Immigration Studies, Cato Institute

Mr. Bier, by the time the last baby boomers turn 65 in 2020, it is projected that 73 million older Americans will make up over one-fifth of the US population. Unfortunately, the current caregiver shortfall would result in the rising cost of care and overworked caregivers that lack the time and energy to meet patient's needs.

Can you speak to how increasing pathways of legal immigration might address these needs?

4) Mr. David Bier, Director of Immigration Studies, Cato Institute

Mr. Bier, in 2023, about 34 million people entered a legal process to try to obtain a green card, yet barely more than 1 million will succeed and receive legal permanent residence, just three percent of applicants.

What benefits does expanding legal pathways for citizenship help us to tackle the issues we are confronting in our broken immigration system and down at the southwest border?

Responses to Questions for the Record

submitted to

David Bier
Director of Immigration Studies
Cato Institute

to accompany the May 8, 2024, hearing on

"The Cost of the Border Crisis"
Committee on the Budget
United States House of Representatives

Submitted June 13, 2024

Questions from Rep. Adriano Espaillat

1. **Mr. Bier, my colleagues and I introduced HR 3599 -- DIGNIDAD (Dignity) Act which would decrease current barriers to legal immigration and increase investments in the technological infrastructure at ports of entry. How do you think comprehensive immigration reform bills like the Dignity Act that address holes within our immigration system will affect the nation's economic outlook?**

   Response: The Dignity Act makes substantial improvements to the U.S. immigration system. It creates legal ways to address America's workforce needs. The Dignity Act would reduce America's deficit and increase economic growth.

2. **Mr. Bier, it is estimated that over two million immigrants in the US experience underemployment and unemployment. How can investing in workforce programs that help immigrants find use for their foreign credentials, like a medical license from their home country, help grow the economy?**

   Response: The most important reforms in this area would immediately recognize foreign credentials and reduce licensing barriers to entry into the workforce. Almost a quarter of all workers now have a license, up from just 5 percent in the 1950s, and the number of occupations requiring a license has never been higher. States should either remove these unnecessary requirements or reduce the requirements for licensure for workers who have significant experience in their home countries or other states.

3. **Mr. Bier, by the time the last baby boomers turn 65 in 2030, it is projected that 73 million older Americans will make up over one-fifth of the US population. Unfortunately, the current caregiver shortfall would result in the rising cost of care and overworked caregivers that lack the time and energy to meet patient's needs. Can you speak to how increasing pathways of legal immigration might address these needs?**

   Response: Currently, the United States grants fewer than 5,000 green cards to immigrants performing jobs not requiring a college degree, meaning that it will be impossible for the legal immigration system to fill the demand for personal care or home health aide jobs. Moreover, for skilled positions, including doctors and nurses, the legal immigration system is extremely backlogged, with more than 1.4 million skilled workers currently waiting for green cards. We need to address the backlogs and streamline the process to meet the demand for workers across all skill levels.

4. **Mr. Bier, in 2023, about 34 million people entered a legal process to try to obtain a green card, yet barely more than 1 million will succeed and receive legal permanent residence, just three percent of applicants. What benefits does expanding legal pathways for citizenship help us to tackle the issues we are confronting in our broken immigration system and down at the southwest border?**

   Response: Legal pathways are effective policy solutions to reduce illegal immigration. The Biden administration has used its parole authority to create some new programs for legal temporary admissions, and they have already significantly reduced illegal immigration from the five countries targeted. However, more countries should be included, and the low cap on these parole programs should be lifted. This is not the only answer. Congress must address the long-term needs of the United States for workers and ensure that those admitted on a temporary basis do not lose status and become undocumented.

○