

118TH CONGRESS  
1ST SESSION

# S. RES. 362

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 22), 2023

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

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# RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

Whereas, in August 2022, the Department of Homeland Security terminated the Migrant Protection Protocols (commonly known as the Remain in Mexico policy), which required aliens with pending asylum claims to wait in Mexico;

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

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

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

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

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

Whereas, during fiscal year 2021, U.S. Customs and Border Protection made more than 1,700,000 arrests of illegal immigrants along the international border between the United States and Mexico, which was the highest level ever recorded until more than 2,300,000 illegal immi-

grants were arrested along such border during fiscal year 2022;

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

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

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

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

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

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

Whereas, in November 2022, Texas Governor Greg Abbott—

(1) declared a state of invasion at the southern border; and

(2) increased security at the border to protect the state of Texas by invoking—

(A) section 10 of article I of the Constitution of the United States; and

(B) the invasion clauses in the Texas Constitution;

Whereas, in March 2023, at a hearing of the Committee on Homeland Security of the House of Representatives, U.S. Border Patrol Chief Raul Ortiz told lawmakers that the Department of Homeland Security did not have operational control of the border;

Whereas, in March 2023, at a hearing of the Committee on the Judiciary of the Senate, Secretary of Homeland Security Alejandro Mayorkas stated that he does not use the statutory definition of operational control under section 2(b) of the Secure Fence Act of 2006 (Public Law 109–367; 8 U.S.C. 1701 note) when asked if the Department of Homeland Security had operational control of the border;

Whereas, on January 6, 2023, the Biden Administration abused its parole authority under section 212(d)(5) of the Immigration Nationality Act (8 U.S.C. 1182(d)(5)) to create a new parole program for nationals of Cuba, Haiti, Nicaragua, and Venezuela;

Whereas, on April 27, 2023, the Biden Administration further abused its parole authority by creating a new family reunification parole process, which grants parole to entire categories of aliens rather than granting parole on a case-by-case basis, as required under such section 212(d)(5);

Whereas the Biden Administration created a parole with conditions policy authorizing U.S. Border Patrol agents to release aliens through parole before they are given a Notice to Appear or entered into removal proceedings;

Whereas the Biden Administration has expanded the use of the CBP One app, allowing tens of thousands of aliens to enter the United States unlawfully to hide the mass immigration surge following the termination of the order of suspension issued by the Director of the Centers for Disease Control and Prevention under section 362 of the Public Health Service Act (42 U.S.C. 265) as a result of the public health emergency relating to the COVID-19 pandemic (commonly known as the “title 42 order”);

Whereas drug cartels are receiving an estimated \$13,000,000,000 each year from their human smuggling operations across the southern border of the United States, which represents an enormous increase from the estimated \$500,000,000 the drug cartels received in 2018 from such operations;

Whereas, in March 2023, according to the non-detained docket, an estimated 5,290,000 illegal aliens were at large in the United States, including 407,983 criminal aliens;

Whereas the estimated fiscal burden of illegal immigration on taxpayers in fiscal year 2023 is estimated to be \$150,700,000,000, which is a massive increase from the

estimated fiscal burden of \$116,000,000,000 during fiscal year 2017. Tax payments by illegal aliens are equal to approximately  $\frac{1}{6}$  of the costs incurred by government entities in the United States on their behalf;

Whereas, during fiscal year 2022, total Federal justice enforcement expenditures as a result of illegal immigration were \$25,100,000,000 and total Federal welfare program expenditures for illegal aliens were \$11,600,000,000;

Whereas, in April 2023, the Biden Administration proposed a plan to expand healthcare access for aliens granted deferred action pursuant to the final rule submitted by the Department of Homeland Security titled “Deferred Action for Childhood Arrivals” (87 Fed. Reg. 53152 (August 30, 2022)), further encouraging illegal aliens to enter the United States;

Whereas, on May 3, 2023, the Office of the Inspector General of the Department of Homeland Security issued a report titled “Intensifying Conditions at the Southwest Border Are Negatively Impacting CBP and ICE Employees’ Health and Morale”;

Whereas, in June 2023, the Committee on Homeland Security of the House of Representatives opened an investigation into Secretary of Homeland Security Mayorkas for dereliction of duty;

Whereas, in June 2023, an estimated 16,800,000 illegal aliens resided in the United States, which represents an increase of an estimated 16 percent during the first 2 years of the Biden presidency;

Whereas, on June 30, 2023, U.S. Customs and Border Protection announced the expansion of available CBP One appointments to 1,450 per day;

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

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

Whereas U.S. Customs and Border Protection arrested more than 10,800 illegal aliens during fiscal year 2023 who have been convicted of 1 or more crimes in the United States or abroad, including—

(1) 225 convicted sexual criminals;

(2) 24 who were convicted of homicide or manslaughter;

(3) 232 who were convicted of illegal weapons possession, transport, or trafficking;

(4) 644 who were convicted of burglary, robbery, larceny, theft, or fraud; and

(5) 924 who were convicted of assault, battery, or domestic violence;

Whereas, during fiscal year 2022, U.S. Customs and Border Protection seized—

(1) 14,599 pounds of fentanyl;

(2) 1,871 pounds of heroin;

(3) 175,410 pounds of methamphetamine;

(4) 70,293 pounds of cocaine; and

(5) 13,755 pounds of ketamine;

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



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

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

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

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

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

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

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

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

1       *Resolved*, That the Senate finds that—

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

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

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

1 (B) “invasion” under section 4 of article  
2 IV of the United States Constitution; and

3 (3) Governors of all 50 States possess the au-  
4 thority and power as Commander-in-Chief of their  
5 respective States to repel the invasion described in  
6 paragraph (2).

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