

**Statement for the Record**  
**U.S. Senate Homeland Security and Governmental Affairs Committee**  
**Hearing on “Securing and Ensuring Order on the Southwest Border”**  
**May 4, 2022**

Challenges at the border have vexed Congress and the executive branch for decades. The humanity of our immigration policies — the capacity of our country to welcome the persecuted and live up to the words inscribed on the base of the Statue of Liberty — can be measured first at the border.

But the border is also place where millions cross each month for commerce and tourism, as well as a critical juncture in our supply chain. And while border communities are safer than ever, the borderlands remain a place where security challenges persist.

A secure, humane, and orderly border is an essential part of effective immigration policy.

The National Immigration Forum is a nonprofit organization that works to advance sound federal immigration solutions through its policy expertise, communications outreach, and coalition building work, which forge powerful alliances of diverse constituencies across the country. The Forum represents a network of faith, law enforcement, business and national security leaders and veterans who have come together to establish a new consensus on the important role of immigrants in America. The perspectives of these leaders complement the Forum’s issue expertise on asylum and border policy and inform our perspective on the role of DHS and Congress in border issues.

The Forum appreciates the opportunity to provide its views on the current situation at the border, the possible coming suspension of the Title 42 protocol, and the solutions which might sustainably improve border management and help address the logistical, humanitarian, and security concerns associated with sharp increases in irregular migration.

**I. Background**

Since April 2020, an increasing number of migrants have been encountered at our southern border.<sup>1</sup> Arriving migrants at the border include large numbers of single adults as well as asylum seeking families and unaccompanied children (UACs). The increases have been driven in part by migrants from traditional “sending” countries in Central America, but they have also included migrants from elsewhere in the hemisphere and around the world.

It is probable that migrant arrivals will continue to increase throughout the spring and early summer of 2022. Migration regularly rises in the more temperate spring months, and encounters peaked in May in five of the last eight years.<sup>2</sup> In addition, the planned roll-back<sup>3</sup> of the Title 42 policy on May 23 is likely to — at least initially — drive these numbers up further.

Increases in migration at the border are not new. The current rise in single adult arrivals is reminiscent of increases in the 2000s and in decades prior. The large numbers of arriving

---

<sup>1</sup> “Southwest Land Border Encounters,” CBP Newsroom, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

<sup>2</sup> “Stats and Summaries,” CBP Newsroom, <https://www.cbp.gov/newsroom/media-resources/stats>

<sup>3</sup> “CDC Public Health Determination and Termination of Title 42 Order,” CDC, <https://www.cdc.gov/media/releases/2022/s0401-title-42.html>

families and children fleeing persecution and instability recalls more recent influxes in 2014 and particularly 2019, when unprecedented numbers of families from Central America sought asylum and protective status at our border. In fact, while encounters and apprehensions are at record highs, the number of individual border crossers are likely in line with past spikes given the increased recidivism<sup>4</sup> under Title 42 and the significantly higher proportion of migrants apprehended in the present.<sup>5</sup>

Elevated migration combined with outdated and ineffective border management policies has posed a series of challenges to creating a more orderly and secure border. These challenges will not be fully addressed without significant administrative improvements and reforms.

## II. Key challenges at the border

Congress and the administration must work together to properly address ongoing dysfunction at the border.

### Title 42

Title 42, the emergency health policy introduced in April 2020 under the Trump administration, has been used over 1.7 million times to rapidly expel arriving migrants. . Although it is set to end on May 23, the Biden administration continues to utilize it for border management, yielding both a deeply problematic humanitarian record<sup>6</sup> and a history of failure in ensuring a secure and orderly border.

In a June 2021 Government Accountability Office (GAO) report, Border Patrol officials reported that Title 42 “negatively affected enforcement,” leading to the “highest level of recidivism in decades” while “reducing opportunities to gather intelligence.”<sup>7</sup> After Title 42 was first introduced, migrant encounters rose for 15 straight months.<sup>8</sup> This is because unlike typical immigration processing under Title 8, the policy results in immediate expulsions. The policy offers no protections for the most vulnerable migrants, but also no consequences for those who improperly enter into the U.S. and are removed, leading many to attempt to cross again and again. Overall recidivism rates have quadrupled under Title 42, significantly inflating overall encounter totals.<sup>9</sup> For those populations most likely to be returned under Title 42, recidivism is even higher –approaching 50% for single adults from the Northern Triangle.<sup>10</sup> Some individuals have reportedly attempted to cross the border more than 30 times in one calendar year, repeatedly crossing with no repercussions after being repeatedly returned to Mexico.<sup>11</sup>

<sup>4</sup> Danilo Zak, “Explainer: Title 42 and What Comes Next at the Border,” National Immigration Forum, <https://immigrationforum.org/article/explainer-title-42-and-what-comes-next-at-the-border/>

<sup>5</sup> “Congressional Budget Justification Fiscal Year (FY) 2023,” DHS, <https://www.dhs.gov/publication/congressional-budget-justification-fiscal-year-fy-2023>

<sup>6</sup> “Two Years of Suffering,” Human Rights First, <https://www.humanrightsfirst.org/resource/two-years-suffering-biden-administration-continues-use-discredited-title-42-order-flout>

<sup>7</sup> “CBP’s Response to COVID-19,” GAO, <https://www.gao.gov/assets/720/714997.pdf>

<sup>8</sup> “Southwest Land Border Encounters,” CBP Newsroom

<sup>9</sup> Ibid.

<sup>10</sup> “Defendant’s Opposition to Plaintiff’s Motion for Temporary Restraining Order,” CDC filing in *State of Arizona et al v. Centers for Disease Control and Prevention*, <https://storage.courtlistener.com/recap/gov.uscourts.lawd.188754/gov.uscourts.lawd.188754.27.0.pdf>

<sup>11</sup> Kate Morissey, “Mexican adults are crossing the border again and again in attempts to reach the United States,” San Diego Union Tribune, <https://www.sandiegouniontribune.com/news/immigration/story/2021-07-11/mexican-adult-migrants>

Title 42 has also been a boon to cartels and other transnational criminal organizations involved in the smuggling of migrants, who see the policy as a major windfall.<sup>12</sup> Criminal organizations also prey on vulnerable migrants, robbing, kidnapping and assaulting many of those returned to dangerous conditions in Northern Mexico under Title 42, where some are expelled in the dead of night without access to shelter and safety. One senior border official said: “Cartels or transnational criminal organizations are taking advantage of the situation.”<sup>13</sup>

The most chaotic and disorderly scenes at the border in the past year can be traced back to Title 42. When thousands of Haitians crossed the border and set up camp under a bridge in Del Rio, Texas in September 2021, they did so in part because Title 42 provided them few alternatives to request asylum in a more orderly fashion.<sup>14</sup> Similarly, earlier in 2021, CBP and HHS facilities were overwhelmed by thousands of unaccompanied children because many parents attempted to protect their children by sending them across the border alone after families were being turned away en masse under Title 42.<sup>15</sup>

Title 42 relies on increasingly shaky public health justifications and faces an uncertain future in the courts – with ongoing legal challenges to both its legality and its scheduled termination. But beyond these considerations, the policy should be ended as soon as possible because it is contributing to a less orderly, less secure border.

### **Narcotics smuggling and the need to modernize our ports of entry**

The smuggling of narcotics across the border — particularly fentanyl — remains a major security challenge that is severely and tragically impacting the lives of every-day Americans.

To address this serious problem, it is critical to pinpoint how and where most drugs are smuggled across the border. According to DHS statistics, in March 2022, 87% of all fentanyl seizures at the southwest border occurred at ports of entry by CBP OFO, not between ports of entry (POEs) by Border Patrol.<sup>16</sup> This stands to reason, as CBP has much more effective and sophisticated security infrastructure set up between the ports than at them. In Fiscal Year 2021, CBP estimated it apprehended 82.6% of migrants attempting to cross between POEs.<sup>17</sup> However, that same year, CBP OFO was only able to scan 2% of private vehicles and 15% of commercial vehicles using non-intrusive imaging systems upon entry at ports.<sup>18</sup>

<sup>12</sup> Laura Gottesdiener and Sarah Kinoshian, “Migrant smugglers see boost from U.S. pandemic border policy,” Reuters, <https://www.reuters.com/article/uk-usa-immigration-smuggling-insight-idUKKBN27S23U>

<sup>13</sup> Julian Resendiz, “Border Patrol: Mexican cartel’s ‘charging every person that comes across,’” Border Report, <https://www.borderreport.com/hot-topics/immigration/border-patrol-mexican-cartels-charging-every-person-that-comes-across/>

<sup>14</sup> “Q&A: The Post-Title 42 U.S.-Mexico Border,” Washington Office on Latin America, <https://www.wola.org/2022/03/qa-the-post-title-42-u-s-mexico-border/#:~:text=But%20Title%2042%20closed%20the%20land%20ports%20of%20entry%20to%20asylum%20seekers%20for%20more%20than%20two%20years.>

<sup>15</sup> David Bier, “Immediate Solutions for Migrant Children,” Cato Institute, <https://www.cato.org/publications/immediate-solutions-migrant-children>

<sup>16</sup> “Drug Seizure Statistics,” CBP Newsroom, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

<sup>17</sup> “Congressional Budget Justification Fiscal Year (FY) 2023,” DHS

<sup>18</sup> “Federal Government Perspective: Improving Security, Trade, and Travel Flows at the Southwest Border Ports of Entry,” U.S. Senate Committee on Homeland Security and Government Affairs, <https://www.hsgac.senate.gov/hearings/federal-government-perspective-improving-security-trade-and-travel-flows-at-the-southwest-border-ports-of-entry>

While limited resources for POE screening plays a role, another problem is that the POEs were designed an average of 40 years ago and are often dilapidated and inefficient, in dire need of modernization. While planned modernization efforts are under way, they have moved at a snail's pace due to excessive red tape, but. Under the Homeland Security Act of 2002, each new POE infrastructure project conceived by CBP must first be evaluated by the General Services Administration (GSA).<sup>19</sup> GSA conducts a study to consider whether the project is reasonable and to determine the amount of funding necessary to complete it. Yet, due to growing backlogs of projects awaiting GSA studies, this process can take several years, halting progress.

Large amounts of narcotics are smuggled across the border chiefly because we do not do a good enough job of efficiently and effectively screening vehicles — many driven by U.S. citizens and visa holders — as they enter the country at POEs. Inadequate and outdated infrastructure at POEs also impinges on the orderly flow of people and commerce and the ability to create more orderly asylum processes for those fleeing persecution.

### **Inadequate staffing and resources**

Congress should devote additional staffing and resources to respond to migration the challenges at the southern border.

While the number of Border Patrol agents and officers between POEs has grown exponentially in recent decades,<sup>20</sup> staffing and resources for other parts of the immigration system have not kept pace. In asylum processing for example, a dearth of asylum officers, immigration judges, ICE OPLA attorneys, and others necessary personnel has contributed to long delays and an immigration court backlog that is approaching six years. At ports of entry, CBP OFO has reported a staffing shortage of 2,700 officers. Between ports, a lack of civilian processing personnel has required Border Patrol agents to spend as much as 60% of their time processing, transporting, and managing migrants that were already apprehended rather than patrolling the border.<sup>21</sup>

At the same time, our border processing facilities and infrastructure are also lacking. Existing CBP facilities provide poor conditions for migrant detention, and licensed ORR shelters for unaccompanied children have been repeatedly overwhelmed during upticks in migration.

### **III. Solutions for a more orderly and secure border**

The Biden administration has released a plan to respond to increasing migration levels at the border and to prepare for the potential end of Title 42 in May.<sup>22</sup> However, this plan will be more effective with resources and funding to address the challenges above to create sustainable

---

<sup>19</sup> Ibid.

<sup>20</sup> "United States Border Patrol: Border Patrol Agent Nationwide Staffing by Fiscal Year," CBP, [https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202019%29\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202019%29_0.pdf)

<sup>21</sup> "CBP Has Improved Southwest Border Technology, But Significant Challenges Remain," DHS OIG, <https://www.oig.dhs.gov/sites/default/files/assets/2021-02/OIG-21-21-Feb21.pdf>

<sup>22</sup> "DHS Plan for Southwest Border Security and Preparedness," DHS, [https://www.dhs.gov/sites/default/files/2022-04/22\\_0426\\_dhs-plan-southwest-border-security-preparedness.pdf](https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf)

border management policies. This will require cooperation between Congress and the Biden administration, with a focus on targeted solutions.

### Replacing Title 42

Title 42 highlights the perils of relying on a health policy to manage the border. Through encouraging recidivism, it is contributing to disorder and security challenges at the border. The announced end of the policy on May 23 (absent court intervention) has raised questions from Democrats and Republicans alike as to whether the administration is prepared to handle an increase in migration. While some have proposed legislation keeping Title 42 in place, the Forum believes that approach fails to address the underlying problems at our border and will only prolong existing challenges.

Rather, the Forum sees this as an opportunity for a bipartisan group of lawmakers to come to the table on sustainable border solutions. Congress should instead consider legislation that improves upon and streamlines existing Title 8 immigration and border procedures. Bipartisan border legislation like the Bipartisan Border Solutions Act<sup>23</sup> and the Border Response Resilience Act<sup>24</sup> could serve as starting points for addressing the challenges that have repeatedly arising at the border in the last decade.

### Providing proper resources and staffing

Congress is also responsible for providing appropriate resources, funding, and personnel to relevant federal agencies and to border communities so reforms can be implemented swiftly and effectively. Congress has already taken helpful steps in providing funds for infrastructure improvements and over \$5 billion was included in both the Infrastructure and Jobs Act as well as in Fiscal Year 2022 appropriations.<sup>25</sup> However, additional resources will be necessary for the administration to effectively respond to continuing increases in migration.

Congress should provide additional funding and personnel to expedite asylum processes, secure and modernize ports of entry, and build and staff more appropriate facilities for migrants at the border. Congress has been ramping up the number of Border Patrol officers for decades. This has come at the expense of other significant staffing challenges at the border, and Congress should address these challenges by providing additional funds for the hiring and training of immigration judges, asylum officers, CBP OFO personnel, processing coordinators, and child welfare experts.

### Addressing challenges beyond the border

Effectively responding to irregular migration must include policy solutions that extend beyond the border itself. Congress and the administration should work to develop a comprehensive regional response to irregular migration in partnership with other countries in the Western

<sup>23</sup>Danilo Zak, "Bill Analysis: Bipartisan Border Solutions Act," National Immigration Forum, <https://immigrationforum.org/article/bill-analysis-the-bipartisan-border-solutions-act/>

<sup>24</sup>Danilo Zak, "Bill Summary: The Border Response Resilience Act," National Immigration Forum, <https://immigrationforum.org/article/bill-summary-the-border-response-resilience-act/>

<sup>25</sup>Danilo Zak, "Fact Sheet: Border Funding in the Bipartisan Infrastructure Legislation," National Immigration Forum, <https://immigrationforum.org/article/fact-sheet-border-funding-in-the-bipartisan-infrastructure-legislation/>; "H.R. 2471: Consolidated Appropriations, 2022," 117<sup>th</sup> Congress, <https://www.congress.gov/bill/117th-congress/house-bill/2471/text>

Field Code Changed

Formatted: Superscript

Hemisphere. We should focus on the root causes of migration, combatting violence and corruption in key sending countries and creating strategies for disrupting smuggling and human trafficking routes.<sup>26</sup>

Congress should pass needed reforms to improve legal immigration and formal refugee systems, which will also address irregular migration.<sup>27</sup> When more people have access to legal and orderly paths to both employment and protection, embarking on a dangerous journey to the southern border would no longer be necessary.

#### **IV. Conclusion**

As Congress holds hearings to examine border management policies and conduct oversight of the administration's border approach, it should recognize that productive, bipartisan action on this issue is not out of reach. Increasing migration at the border has resulted in serious challenges that must be addressed via thoughtful, evidenced-backed reforms. Many of the problems the border faces today are the same ones we faced during previous migration increases in the 2000s, 2014, and 2019. Absent congressional action on the areas outlined above, we face the risk of perpetuating reactive policies that do little to ensure order, humanity, or security at the border.

---

<sup>26</sup> "Push or Pull Factors: What Drives Central American Migrants to the U.S.," National Immigration Forum, <https://immigrationforum.org/article/push-or-pull-factors-what-drives-central-american-migrants-to-the-u-s/>

<sup>27</sup> Cristobal Ramón, "Investing in Alternatives to Irregular Migration from Central America: Options to Expand U.S. Employment," Migration Policy Institute, <https://www.migrationpolicy.org/research/alternatives-irregular-migration-central-america>