



Arizona House of Representatives

October 26, 2021

Attorney General Mark Brnovich
2005 North Central Avenue
Phoenix, Arizona 85004

Mr. Attorney General,

In light of the efforts by the new federal administration of President Joe Biden to encourage, rather than discourage, illegal aliens coming to our country, including by crossing the Arizona border illegally, I am writing to ask for your formal legal opinion of whether or not the federal government has failed—intentionally or unintentionally—to uphold its obligations to protect our state from invasion under Article IV, Section 4 of the U.S. Constitution.

I would note that it is estimated that prior to September 2021 there were approximately 1,000,000 illegal entrants who have stayed in our country—600,000 caught and released, plus 400,000 ‘got aways’—a significant portion of whom entered illegally across Arizona’s border.

I would further note that while some might assume that an ‘invasion’ would be conducted by a nation-state, one too might one assume that Congress would only declare war against a nation-state; however, Congress declared war (“Authorization for the Use of Military Force,” aka, “AUMF”) against multiple non-nation states – in fact, the Congress didn’t even know entirely who they were declaring war against – in their AUMF of 2001.¹

As a result of the current invasion, our communities are suffering tremendously from a spike in criminals crossing our border.²

- In FY20, CBP arrested 2,438 illegal immigrants with criminal convictions. In the first 8 months of 2021 alone, CBP has arrested 9,728 illegal immigrants with criminal convictions (299% increase)
- 511% increase in Assault, Battery and Domestic Violence arrests from FY20 to FY21
- 314% increase in Driving Under the Influence arrests from FY20 to FY21
- 401% increase in Illegal Drug Possession and Trafficking from FY20 to FY21
- 187% increase in Sexual Offenses from FY20 to FY21

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- 1,666% increase in Homicide and Manslaughter from FY20 to FY21
- So far in FY21, CBP has seized 9,337 pounds of fentanyl. In the entirety of FY2020, CBP seized 4,776 pounds of fentanyl (95% increase)

An invasion is defined by Merriam-Webster Dictionary³ as “the act of entering a place in large numbers especially in a way that is harmful or unwanted.” The facts, as plainly stated above, certainly support a characterization of the border crisis facing our nation as an invasion.

At this very moment, Border Patrol officials are monitoring as many as 60,000 migrants amassing on the Mexican side of the U.S. border with the intention of crossing illegally into the United States in the coming days, according to sources within Border Patrol.⁴ Furthermore, Customs and Border Patrol recently announced that there had been a record breaking more than 1.7 million migrant detentions by U.S. authorities in fiscal year 2021.⁵

While the crisis on our southern border may not constitute a nation-state invasion, the organized and intentional violation of our laws by crossing our border illegally, supported by both the rhetoric and policies of the current presidential administration as well as the participation and assistance of the Mexican drug cartels, who themselves take violent steps to control large and strategically advantageous portions of the border, it is my firm belief that this coordinated crisis is an invasion and would appreciate your formal legal opinion on the question.

Sincerely,



Jake Hoffman
Representative
Arizona House of Representatives

¹ <https://www.congress.gov/bill/107th-congress/senate-joint-resolution/23/text/enr>

² <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics>

³ <https://www.merriam-webster.com/dictionary/invasion#legalDictionary>

⁴ <https://www.foxnews.com/politics/tens-thousands-migrants-southern-border-remain-in-mexico-restart>

⁵ https://www.washingtonpost.com/national/border-arrests-record-levels-2021/2021/10/19/289dce64-3115-11ec-a880-a9d8c009a0b1_story.html