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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

14 State of Arizona,
15 Plaintiff,
16 v.
17 Alejandro Mayorkas in his official
18 capacity as Secretary of Homeland
19 Security; United States Department of
20 Homeland Security; Troy Miller in his
21 official capacity as serves as Senior
22 Official Performing the Duties of the
23 Commissioner of U.S. Customs and
Border Protection; Tae Johnson in his
official capacity as Senior Official
Performing the Duties of Director of
U.S. Immigration and Customs
Enforcement,
Defendants.

No. 2:21-cv-00617-DWL

DECLARATION OF ROBERT J. MAKAR

24
25 I, Robert J. Makar, declare as follows:

26 1. I am an attorney licensed to practice law in Arizona. I am an Assistant
27 Attorney General with the Arizona Office of the Attorney General.
28

1 2. Attached hereto as **Exhibit A** is a true and correct copy of the
2 “Proclamation on the Termination Of Emergency With Respect To The Southern Border
3 Of The United States And Redirection Of Funds Diverted To Border Wall Construction”
4 issued by President Biden on January 20, 2021 and available at
5 <https://tinyurl.com/kpjyfuvn>.

6 3. Attached hereto as **Exhibit B** is a true and correct copy of an article titled
7 “Biden cancels border wall projects Trump paid for with diverted military funds,” written
8 by Nick Miroff for *The Washington Post*. The article was published on April 30, 2021,
9 and is publicly available at <https://tinyurl.com/ns5e7b5v>.

10 4. Attached hereto as **Exhibit C** is a true and correct copy of an article titled
11 “Biden administration reallocates \$2.2 billion in Trump border wall funds to military
12 projects,” written by Rebecca Morin for *USA Today*. The article was published on June
13 11, 2021, and is publicly available at <https://tinyurl.com/h8dZX2tn>.

14 5. Attached hereto as **Exhibit D** is a true and correct copy of an article titled
15 “Biden’s order to pause construction on Trump’s border wall expires on March 20.
16 Nobody knows what happens next,” written by Mia Jankowicz for *Business Insider*. The
17 article was published on March 16, 2021, and is publicly available at
18 <https://tinyurl.com/55a6cw59>.

19 6. Attached hereto as **Exhibit E** is a true and correct copy of an article titled
20 “Biden stopped building Trump’s wall. Here’s what it looks like now,” written by Ed
21 Lavandera, Ashley Killough, and Catherine E. Shoichet for *CNN*. The article was
22 published on April 30, 2021, and is publicly available at <https://tinyurl.com/5a9vjc4k>.

23 7. Attached hereto as **Exhibit F** is a true and correct copy of an article titled
24 “US on track to encounter record 2 million migrants on the southern border, government
25 estimates show,” written by Priscilla Alvarez for *CNN*. The article was published on
26 March 31, 2021, and is publicly available at <https://tinyurl.com/23enthcr>.

27 8. Attached hereto as **Exhibit G** is a true and correct copy of an article titled
28 “From India, Brazil and Beyond: Pandemic Refugees at the Border,” written by Miriam

1 Jordan for *The New York Times*. The article was published on May 16, 2021, and is
2 publicly available at <https://tinyurl.com/m4f9mfuf>.

3 9. Attached hereto as **Exhibit H** is a true and correct copy of an article titled
4 “Biden Admin Considers Restarting Border Wall Construction To ‘Plug Gaps’ Amid
5 Biden’s Border Crisis: Report,” written by Ryan Saavedra for *The Daily Wire*. The
6 article was published on April 6, 2021, and is publicly available at
7 <https://tinyurl.com/dmvtd4er>.

8 10. Attached hereto as **Exhibit I** is a true and correct copy of an article titled
9 “Biden to bring in asylum seekers forced to wait in Mexico under Trump program,”
10 written by Ted Hesson and Mimi Dwyer for *Reuters*. The article was published on
11 February 12, 2021, and is publicly available at <https://tinyurl.com/dzah6dv3>.

12 11. Attached hereto as **Exhibit J** is a true and correct copy of the “Executive
13 Order on Creating a Comprehensive Regional Framework to Address the Causes of
14 Migration, to Manage Migration Throughout North and Central America, and to Provide
15 Safe and Orderly Processing of Asylum Seekers at the United States Border,” issued by
16 the Office of the White House on February 2, 2021, and is publicly available at
17 <https://tinyurl.com/sktbwp46>.

18 12. Attached hereto as **Exhibit K** is a true and correct copy of the press release
19 “DHS Announces Process to Address Individuals in Mexico with Active MPP Cases,”
20 issued by the Department of Homeland Security on February 11, 2021, and is publicly
21 available at <https://tinyurl.com/afdc8h2v>.

22 13. Attached hereto as **Exhibit L** is a true and correct copy of the
23 memorandum titled “Termination of the Migrant Protection Protocols Program,” issued
24 by Alejandro N. Mayorkas on behalf of the Department of Homeland Security on June 1,
25 2021, and is publicly available at <https://tinyurl.com/yp5v3h8h>.

26 14. Attached hereto as **Exhibit M** is a true and correct copy of a document
27 titled “Credible Fear and Asylum Process: Fiscal Year (FY) 2008 - FY 2019” published
28

1 by the Executive Office for Immigration Review Adjudication Statistics, based on data
2 generated October 23, 2019, and is publicly available at <https://tinyurl.com/9catsdwm>.

3 15. Attached hereto as **Exhibit N** is a true and correct copy of an article titled
4 “Joe Biden says fast immigration changes could cause ‘2 million people on our border’,”
5 written by Steven Nelson for *The New York Post*. The article was published on
6 December 22, 2020, and is publicly available at <https://tinyurl.com/h2hwbez>.

7 16. Attached hereto as **Exhibit O** is a true and correct copy of an article titled
8 “At the border, a widely predicted crisis that caught Biden off guard,” written by Nick
9 Miroff for *The Washington Post*. The article was published on April 26, 2021, and is
10 publicly available at <https://tinyurl.com/yzb39sz4>.

11 17. Attached hereto as **Exhibit P** is a true and correct copy of the press release
12 “DHS Announces Rescission of Civil Penalties for Failure-to-Depart,” issued by the
13 Department of Homeland Security on April 23, 2021, and is publicly available at
14 <https://tinyurl.com/4sa25j7f>.

15 18. Attached hereto as **Exhibit Q** is a true and correct copy of the
16 memorandum “Review of and Interim Revision to Civil Immigration Enforcement and
17 Removal Policies and Priorities” issued by Acting Secretary David Pekoske on behalf of
18 the Department of Homeland Security on January 20, 2021, and is publicly available at
19 <https://tinyurl.com/3kcv3j82>.

20 19. Attached hereto as **Exhibit R** is a true and correct copy of the
21 memorandum “Interim Guidance: Civil Immigration Enforcement and Removal
22 Priorities” issued by Acting Director Tae D. Johnson on behalf of U.S. Immigration and
23 Customs Enforcement on February 18, 2021, and is publicly available at
24 <https://tinyurl.com/xw9vmej>.

25 20. Attached hereto as **Exhibit S** is a true and correct copy of an email sent by
26 ICE Acting Director Tae D. Johnson on February 4, 2021 with subject line “ICE’s
27 Removal Priorities.”
28

1 21. Attached hereto as **Exhibit T** is a true and correct copy of an email sent
2 from ICE Acting Executive Associate Director Enrique M. Lucero to Acting Director Tae
3 D. Johnson and others on January 27, 2021 with subject line “ERO historical book-in
4 data compared to new DHS memo and PEP.” The text “Rough estimate is book-ins
5 would be reduced by 50% of historical numbers and the vast majority of book-ins would
6 come from CBP transfers” has been highlighted for emphasis.

7 22. Attached hereto as **Exhibit U** is a true and correct copy of an article titled
8 “ICE predicted 50% drop in illegal immigrant arrests under new DHS guidance, email
9 shows,” written by Adam Shaw for *Fox News*. The article was published on April 28,
10 2021, and is publicly available at <https://tinyurl.com/2cb4yasc>.

11 23. Attached hereto as **Exhibit V** is a copy of the transcript of the proceedings
12 in *Arizona v. DHS*, CV 21-00186-PHX-SRB (May 27, 2021).

13 24. Attached hereto as **Exhibit W** is a true and correct copy of an article titled
14 “US To Exempt 250 Asylum-Seekers Daily From Pandemic Rule,” written by Alyssa
15 Aquino for *Law360*. The article was published on May 18, 2021, and is publicly
16 available at <https://tinyurl.com/fs7cfhmu>.

17 25. Attached hereto as **Exhibit X** is a true and correct copy of an article titled
18 “Pressure Amps Up on Biden to Rescind Title 42 Border Order,” written by Claire
19 Hansen for *U.S. News*. The article was published on June 3, 2021, and is publicly
20 available at <https://tinyurl.com/5jrrnt3f>.

21 26. Attached hereto as **Exhibit Y** is a true and correct copy of an article titled
22 “6 ways the border wall could disrupt the environment,” written by Laura Parker for
23 *National Geographic*. The article was published on January 10, 2021, and is publicly
24 available at <https://tinyurl.com/ysfjfcbu>.

25 27. Attached hereto as **Exhibit Z** is a true and correct copy of an article titled
26 “Homeland Security to repair damage created by border wall” written by Elliot Spagat
27 for *The Associated Press*. The article was published on April 30, 2021 and is publicly
28 available at <https://tinyurl.com/x8e6kamf>.

1 28. Attached hereto as **Exhibit AA** is a true and correct copy of a document
2 titled “Myths vs Facts About Immigration Proceedings” published by the United States
3 Department of Justice Executive Office for Immigration Review in December 2020, as it
4 appeared on March 23, 2021. This recording is publicly available at
5 <https://tinyurl.com/k3tn24rk>.

6 29. Attached hereto as **Exhibit BB** is a true and correct copy of the transcript of
7 the May 14, 2021 sworn deposition of Albert Edward Carter, deputy field office director
8 for the ICE Enforcement and Removal Operations, Phoenix field office.

9 I declare under penalty of perjury that the foregoing is true and correct to the best
10 of my knowledge, and that this declaration was issued on July 12, 2021, in Phoenix,
11 Arizona.

12
13 s/ Robert J. Makar
14 Robert J. Makar
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Exhibit A



BRIEFING ROOM

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

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Like every nation, the United States has a right and a duty to secure its borders and protect its people against threats. But building a massive wall that spans the entire southern border is not a serious policy solution. It is a waste of money that diverts attention from genuine threats to our homeland security. My Administration is committed to ensuring that the United States has a comprehensive and humane immigration system that operates consistently with our Nation's values. In furtherance of that commitment, I have determined that the declaration of a national emergency at our southern border in Proclamation 9844 of February 15, 2019 (Declaring a National Emergency Concerning the Southern Border of the United States), was unwarranted. It shall be the policy of my Administration that no more American taxpayer dollars be diverted to construct a border wall. I am also directing a careful review of all resources appropriated or redirected to construct a southern border wall.

NOW THEREFORE I, JOSEPH R. BIDEN JR., President of the United States

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., PRESIDENT OF THE UNITED STATES of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 202 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), hereby declare that the national emergency declared by Proclamation 9844, and continued on February 13, 2020 (85 *Fed. Reg.* 8715), and January 15, 2021, is terminated and that the authorities invoked in that proclamation will no longer be used to construct a wall at the southern border. I hereby further direct as follows:

Section 1. Pause in Construction and Obligation of Funds. (a) The Secretary of Defense and the Secretary of Homeland Security, in consultation with the Director of the Office of Management and Budget, shall direct the appropriate officials within their respective departments to:

(i) pause work on each construction project on the southern border wall, to the extent permitted by law, as soon as possible but in no case later than seven days from the date of this proclamation, to permit:

(A) assessment of the legality of the funding and contracting methods used to construct the wall;

(B) assessment of the administrative and contractual consequences of ceasing each wall construction project; and

(C) completion and implementation of the plan developed in accordance with section 2 of this proclamation;

(ii) pause immediately the obligation of funds related to construction of the southern border wall, to the extent permitted by law; and

(iii) compile detailed information on all southern border wall construction contracts, the completion status of each wall construction project, and the funds used for wall construction since February 15, 2019, including directly appropriated funds and funds drawn from the Treasury Forfeiture Fund (31 U.S.C. 9705(g)(4)(B)), the Department of Defense Drug Interdiction and Counter-Drug Activities account (10 U.S.C. 284), and the Department of Defense Military Construction account (pursuant to the emergency authorities in 10 U.S.C. 2808(a) and 33 U.S.C. 2293(a)).

(b) The pause directed in subsection (a)(i) of this section shall apply to wall projects funded by redirected funds as well as wall projects funded by direct

Case 2:21-cv-00617-DWL Document 15-5 Filed 07/12/21 Page 10 of 106 appropriations. The Secretary of Defense and the Secretary of Homeland Security may make an exception to the pause, however, for urgent measures needed to avert immediate physical dangers or where an exception is required to ensure that funds appropriated by the Congress fulfill their intended purpose.

Sec. 2. Plan for Redirecting Funding and Repurposing Contracts. The Secretary of Defense and the Secretary of Homeland Security, in coordination with the Secretary of the Treasury, the Attorney General, the Director of the Office of Management and Budget, and the heads of any other appropriate executive departments and agencies, and in consultation with the Assistant to the President for National Security Affairs, shall develop a plan for the redirection of funds concerning the southern border wall, as appropriate and consistent with applicable law. The process of developing the plan shall include consideration of terminating or repurposing contracts with private contractors engaged in wall construction, while providing for the expenditure of any funds that the Congress expressly appropriated for wall construction, consistent with their appropriated purpose. The plan shall be developed within 60 days from the date of this proclamation. After the plan is developed, the Secretary of Defense and the Secretary of Homeland Security shall take all appropriate steps to resume, modify, or terminate projects and to otherwise implement the plan.

Sec. 3. Definition. Consistent with Executive Order 13767 of January 25, 2017 (Border Security and Immigration Enforcement Improvements), for the purposes of this proclamation, “wall” means a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier.

Sec. 4. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or

benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

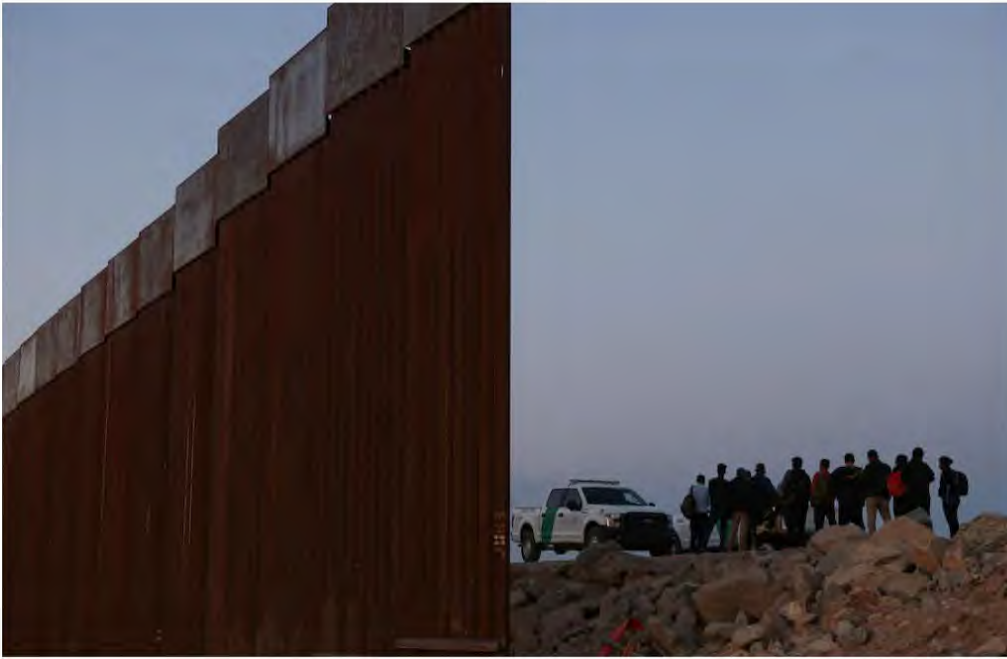
IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.

JOSEPH R. BIDEN JR.

Exhibit B

National

Biden cancels border wall projects Trump paid for with diverted military funds



Asylum seekers are detained by U.S. Border Patrol at the border wall after crossing into the United States near Yuma, Ariz., on April 19. (Jim Urquhart/Reuters)

By Nick Miroff

April 30, 2021 at 1:52 p.m. MST

↑ 3673

The Biden administration said Friday it has canceled border wall projects paid for with funds diverted from Defense Department accounts, a widely expected move that follows Biden's decision to [suspend construction](#) activity on President Donald Trump's signature project.

Trump diverted about \$10 billion from military construction accounts and counternarcotics programs to pay for hundreds of miles of steel barriers along the Mexico border, an effort that Biden has denounced as wasteful and ineffective.

"The Department of Defense is proceeding with canceling all border barrier construction projects paid for with funds originally intended for other military missions and functions such as schools for military children, overseas military construction projects in partner nations, and the National Guard and Reserve equipment account," Jamal Brown, deputy Pentagon spokesman, said in a statement. "Today's action reflects this Administration's continued commitment to defending our nation and supporting our service members and their families."

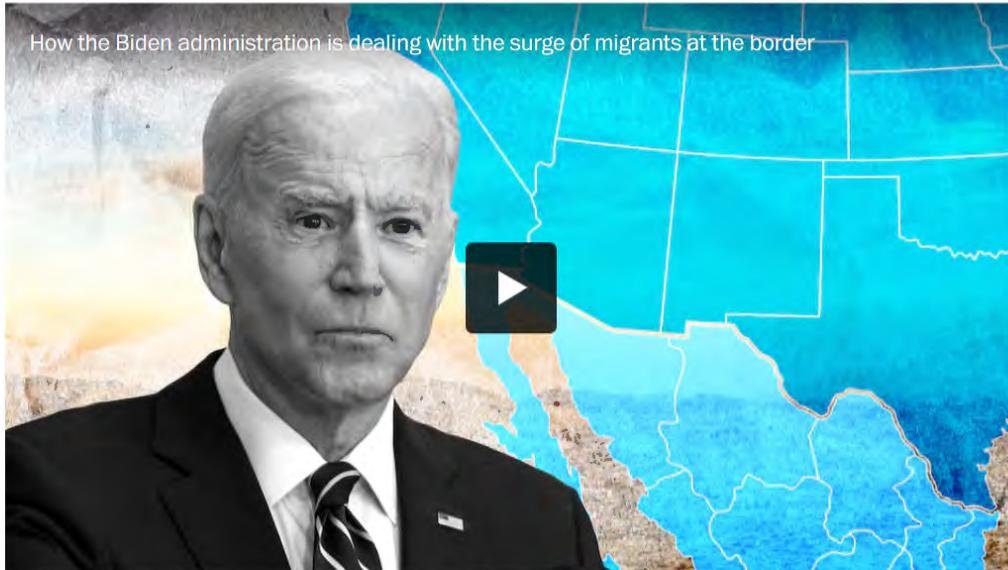
MOST READ NATIONAL





DIVER NEARLY EATEN BY WHALE

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- 3 Videos show Ocean City, Md., police using force on teens while enforcing boardwalk vaping ban
- 4 2020 was the deadliest gun violence year in decades. So far, 2021 is worse.
- 5 'People of Praise leaders failed me': Christian group tied to Justice Amy Coney Barrett faces reckoning over sexual misconduct



The influx of unaccompanied minors at the U.S.-Mexico border stems from crisis in Central America and Trump-era immigration policy. (Blair Guild/The Washington Post)

Trump built 450 miles of new barriers during his term, much of it across the deserts and mountains of southern Arizona where his administration built along national forest land, wildlife preserves and other federal property already under government control. It built far less in the Rio Grande Valley of South Texas, the busiest area for border crossings and the epicenter to a major migration influx.

[Biden pledged to stop building the wall. But he just won the right to seize a Texas family's land for it.]

Friday's joint announcement from the departments of Defense and Homeland Security did not indicate how much money the cancellation will save, nor whether leftover funds would be used to pay demobilization costs to contractors whose bulldozers and excavators were brought to a halt on Jan. 20.

An estimate prepared by the Army Corps of Engineers last fall determined there would be about \$3.3 billion in leftover funds if Biden chose not to proceed with Trump's construction plans for about 285 additional miles of border barriers. The government would save about \$2.6 billion after paying demobilization costs to contractors, the estimate found.





It's also unclear the fate of unfinished border wall segments funded with about \$5 billion in congressional appropriations to DHS during Trump's term. GOP critics of Biden's decision insist he is legally obligated to spend the funds on barrier construction, but Democrats want leftover DHS construction funds to be used on border improvement and security projects.

In a separate statement Friday, DHS said it would use congressionally appropriated funds to repair flood levees in the lower Rio Grande Valley that were damaged during border wall construction. The effort will not expand the barrier, the department said.

Rep. Vicente Gonzalez (D-Tex.), whose district includes portions of the river levee, praised the decision to use the funds for repair projects. "It's imperative that these structures are fixed prior to the hurricane season," he said in a statement.



Hidalgo County, Tex., Judge Richard Cortez said the breaches put an estimated 250,000 people at risk of severe flooding, especially at the beginning of hurricane season. Cortez is frustrated it took the Biden administration so long to address the problem, and he said that county officials had begun to try to fix the levee themselves.

"This should've been done a lot earlier than what it took," Cortez said. "I understand government bureaucracy but . . . the imminent threat of the hurricane season to an area we know floods, I felt that decision should've been made a lot earlier."

The Biden administration will also remediate a site adjacent to the structure in San Diego damaged by soil erosion, releasing photos that show holes where sediments have been swept away.

[Trump's unfinished border wall faces uncertain future after Biden pledge to freeze construction]

In a statement, DHS described the projects as "initial steps to protect border communities from physical dangers resulting from the previous administration's approach to border wall construction," and said the department "continues to review the extensive problems" created

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by Trump's project.



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2 Coronavirus infections dropping where people are vaccinated, rising where they are not, Post analysis finds

3 He opted to skip graduation and work a shift at Waffle House. His boss was not having it: 'I was going to get him there no matter what'

4 Bird lovers are grappling with honorary names linked to racists. Audubon tops the list.

5 America's contest of nightmares isn't even close

"DHS will soon complete a plan that identifies additional measures to address the damage resulting from the prior Administration's border wall construction," the statement said.

The announcement said unused military construction funds would be used to pay for previously deferred military construction projects, and the Pentagon is reviewing the deferred project list to determine new priorities.

Arelis R. Hernández contributed to this report.

🗨 3673 Comments



By Nick Miroff

Nick Miroff covers immigration enforcement and the Department of Homeland Security for The Washington Post. He was a Post foreign correspondent in Latin America from 2010 to 2017, and has been a staff writer since 2006. [Twitter](#)

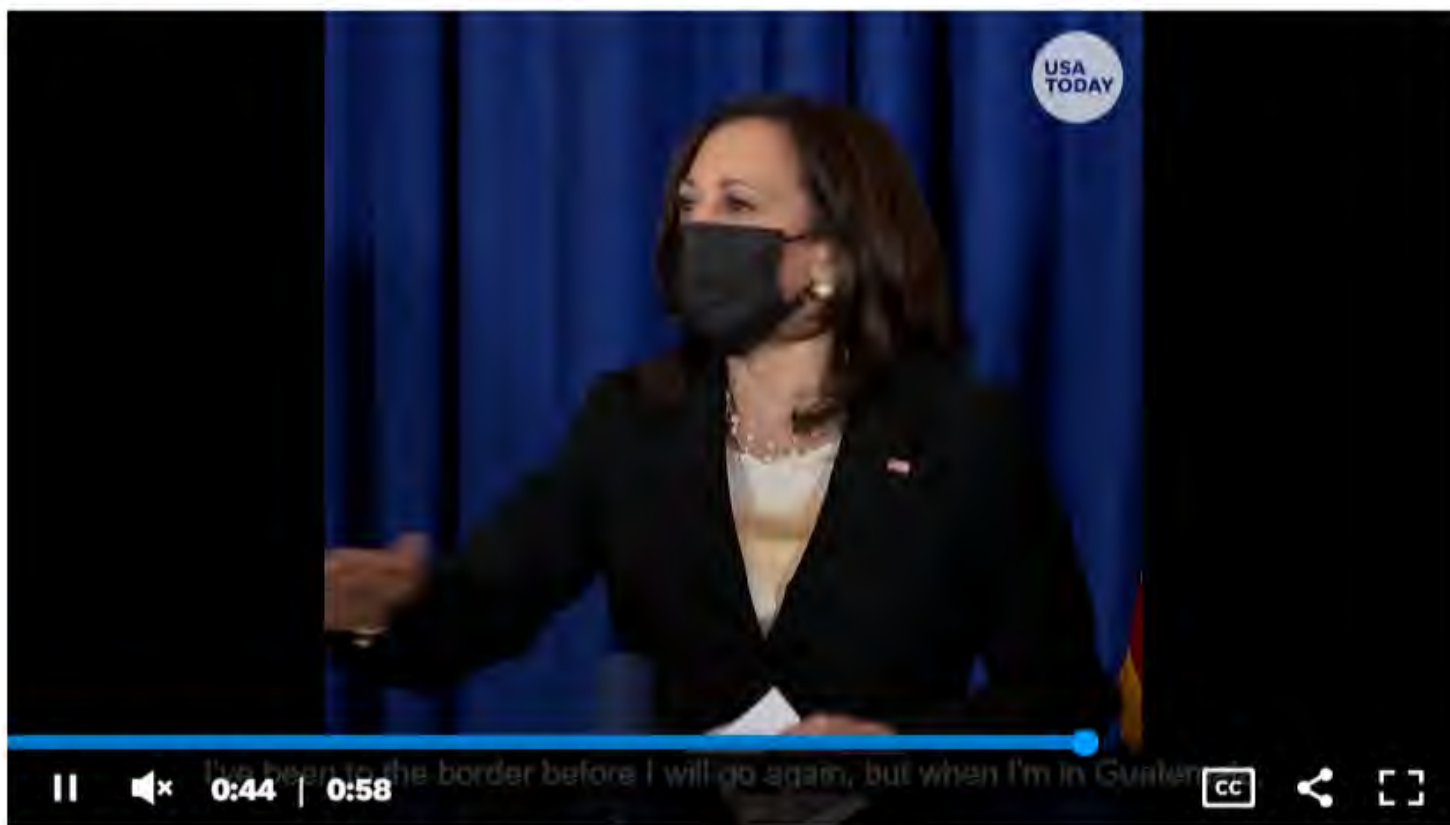
Exhibit C

POLITICS

Biden administration reallocates \$2.2 billion in Trump border wall funds to military projects

Rebecca Morin USA TODAY

Published 3:26 p.m. ET Jun. 11, 2021



VP Kamala Harris defends not visiting US-Mexico border

The vice president brushed off questions about her decision not to go to the US-Mexico border as part of her work to address the spike in migration. *STAFF VIDEO, USA TODAY*

WASHINGTON – The Biden administration said Friday it will divert \$2.2 billion previously allocated for former President Donald Trump's border wall to military projects.

The Department of Defense said that the funding would go towards 66 projects in 11 States, 3 territories, and 16 countries.

Some of the projects include:

some of the projects include:

- \$10 million for the Missile Field Expansion at Fort Greely in Alaska, which is part of America's defense against North Korean ballistic missiles. It was due for an expansion to add two missile interceptors.
- More than \$25 million for the 2nd Radio Battalion Complex in North Carolina. Congress provided funds for the new complex to co-locate two battalions, improve capabilities and efficiencies in training for combat readiness, and meet the growing threat of cyber warfare.
- \$79 million for Spangdahlem Elementary School for U.S. Military Children in Germany, which currently supports over 600 military children and lacks proper air conditioning, plumbing, and security systems.
- More than \$25 million for the Fire/Crash Rescue Station at Tyndall Air Force Base in Florida, which is designed to support up to 15 fire-fighting vehicles and provide space for physical fitness, training, and living quarters for military personnel.
- More than \$9 million for a Small Arms Range in Indiana, which is needed to enhance readiness of the Air Guard unit through marksmanship training.

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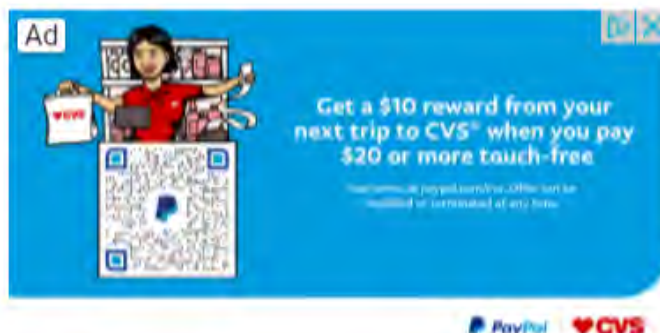


President Joe Biden signed an executive order on Inauguration Day to halt construction of the border wall, and ordered funding for it to be redistributed.

Friday's action is part of the executive order he signed in January.

Trump made building a border wall a top priority of his administration, and diverted funding from several departments, including the Department of Defense, to fund construction of the barrier.

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Trump, in one of his last trips as president, went to the border, where he celebrated the completion of more than 400 miles of border wall being built. But the majority of the construction was on barriers that already existed. The Biden administration says only 52 miles of wall was built where no barrier previously existed. The Office of Management and Budget said Friday that some segments of the wall cost “American taxpayers up to \$46 million per mile.”

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The Department of Homeland Security said that the Trump administration had planned to spend over \$15 billion on wall construction, and diverted over \$10 billion of those funds from military projects and other sources.

More: [Feds threaten to sue Texas over Gov. Greg Abbott's immigration 'disaster' declaration](#)

The Biden administration also called on Congress to cancel border wall funds that remain at the end of the year so it can be used for other resources like “effective border management measures like enhanced technology between points of entry and improved infrastructure at Land Ports of Entry,” the OMB said.

Last year, Congress passed a bipartisan government funding package that included \$1.4 billion for the border wall. The Department of Homeland Security is required by law to use funds, but the administration said it will “utilize all legal authorities to stop wall expansion.”

DHS also announced Friday it will prioritize using the remaining funds for clean-up of construction sites previously funded by the Department of Defense.

Earlier this year, the Biden administration said it was using some border wall funds to repair the flood barrier system in the Rio Grande Valley and to address erosion caused by wall construction in San Diego.

Contributing: Rafael Carranza, Arizona Republic

Reach Rebecca Morin at Twitter [@RebeccaMorin](#)

Exhibit D

Biden's order to pause construction on Trump's border wall expires on March 20. Nobody knows what happens next.

Mia Jankowicz Mar 16, 2021, 6:47 AM



Unfinished border wall in Guadalupe Canyon in Arizona's Peloncillo mountains, on January 20 2021 John Darwin Kurc

- A 60-day pause in southern border wall construction is due to end on Sunday.
- The administration has yet to say what comes next for Trump's signature project.
- Sources Insider spoke to said the surge of migrants at the border is much more pressing than dealing with the wall.
- [See more stories on Insider's business page.](#)

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A 60-day halt to the construction of Trump's border wall is due to expire on Sunday, and the Biden administration is giving few clues about what will happen to it next.

Insider spoke to three people close to the issue, who suggested that

the likeliest outcome is for the White House to put off deciding what to do next, especially in light of the worsening surge of migrants at the US-Mexico border.

Biden signed a proclamation halting wall construction only moments after being sworn in. That 60-day pause comes to an end on Sunday March 21, and officials have yet to announce a new plan. Spokespeople for the White House, Customs and Border Protection (CBP), and the Department of Homeland Security (DHS) declined to comment.

Construction companies contracted under by the Trump administration are not due to immediately restart work on Sunday without intervention.



Nor does there seem to be an appetite to undo any work, which in many places looks jarring and is evidently half-done.

David J. Bier, an immigration policy analyst at the Cato Institute, told Insider that "there's no conversation about" the wall when he speaks to Biden officials.

Instead, he said, they are focused on the influx of people — including children — from trying to cross the border with Mexico. As of Monday, there were 4,200 children in CBP custody, per CBS News.

House GOP leader Kevin McCarthy blamed Biden's new immigration policies, while Press Secretary Jen Psaki placed responsibility on the previous administration's "dismantled, immoral, and ineffective immigration policy" that focused so heavily on the wall.

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The situation appears to have put the issue the future of the wall far down the agenda.

"No one is saying anything about the border wall being some kind of solution to what's happening," Bier said. "No one is thinking 'if only we finished the fence.' Everyone is focused on: 'How do we deal with the people who we process?'"

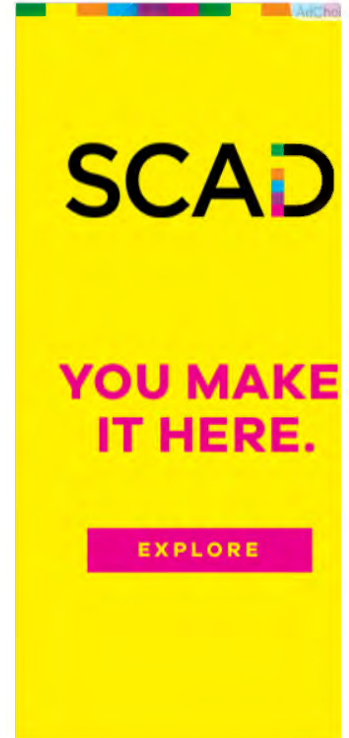
Bier said he expects that the 60-day pause will simply be extended.

Handling a flow of new migrants



Asylum seeking migrant families and unaccompanied minors from Central America take refuge in a makeshift CBP processing center after crossing the Rio Grande, Texas, on March 12, 2021. Adrees Latif/Reuters

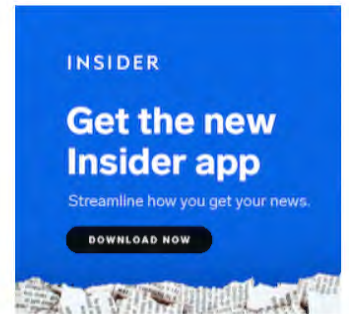
Jessica Bolter, an associate policy analyst at the Migration Policy Institute, told Insider: "I think that the administration is really trying to balance their mission to implement a more humane system at the US-Mexico border and treat migrants in a way that's consistent with humanitarian obligations."





But much of the infrastructure needed to handle the numbers humanely does not exist, and DHS has dispatched the Federal Emergency Management Agency to help out for the next three months, [as NPR reported](#).

[A facility to temporarily house 700 migrant children](#) was opened in Texas in mid-February, prompting criticism from progressives like Alexandria Ocasio-Cortez.



Asylum seeking unaccompanied minors from Central America are separated from other migrants by US Border Patrol agents after crossing the Rio Grande, Texas, on March 14, 2021. Adrees Latif/Reuters

Taking any action on the border wall either way is politically perilous, and a calculated silence seems to be the White House strategy.

CBP still does not have a nominee for commissioner, a post that is currently temporarily held by career official Troy Miller. This key post not being filled may also be holding things up, Bolter said.

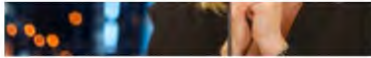
The No Border Wall Coalition, a group of at least 70 anti-wall organizations, have written to the Biden administration highlighting priority sites where they say tearing down the wall would benefit endangered species and habitats.



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According to Myles Traphagen, a borderlands program coordinator at the Wildlands Network, the coalition never heard back.

In the meantime, the Biden administration still appears to be assessing what it can legally do with the \$1.4 billion approved by Congress for the wall.

At a March 10 White House press briefing, Coordinator for the Southern Border Ambassador Roberta Jacobson gave no answer to the question of how much of that money had been spent so far.

Bolter said this money could still be used on things other than wall building. "The Trump administration was using that money mostly for border wall construction, but it there's also an option for it to be used for things like access roads or putting technology into place at the border."

The machines stop. But could they start again?



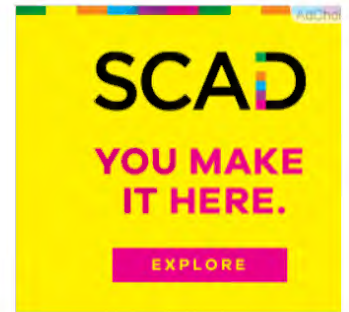
Construction machinery at a standstill, in Guadalupe Canyon at the Arizona-New Mexico border, on January 20 2021. John Darwin Kurc

Since January 20, machinery has largely either stood idle or has been decommissioned from wall construction sites, according to Traphagen, the borderlands coordinator.

Campaigners are wary of any sign that contractors are ignoring the pause. In mid-February, a group recorded footage of earth-moving work in Arizona's Pajarito Mountains, a critical habitat for jaguars. The Center for Biological Diversity [released an alert](#) about the activity.

Traphagen — who has closely monitored construction at several sites for the report sent to the White House — doesn't believe it was construction work, and said it was likely being done to create a route to get machinery out.

(Insider approached the company reportedly doing the work, Fisher Sand & Gravel, and the Army Corps of Engineers for more information, but did not receive a reply.)



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The broader anti-wall campaigning community — disappointed by successive administrations — is deeply cynical of [Biden's promise](#) not to build further border wall, Traphagen said. However, he is personally optimistic, saying that Biden has kept his promises so far.

But as for actually removing border wall, both Bolter and Bier were sceptical that this will happen soon. The likeliest outcome appears to be continued limbo.

Exhibit E

Biden stopped building Trump's wall. Here's what it looks like now

Story by Ed Lavandera, Ashley Killough and Catherine E. Shoichet, CNN
Video by Dave Ruff, Gregg Canes, Joel De La Rosa and Madeleine Stix, CNN

Updated 5:32 PM ET, Fri April 30, 2021

Patagonia Mountains, Arizona (CNN) — Once there was a bustling construction zone here. Now it's like a ghost town, frozen in time.

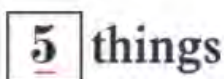
Heavy machinery is parked and motionless. Stacks of steel bollards stretch as far as the eye can see.

The Trump administration built more than 450 miles of fencing along the US-Mexico border -- including hundreds of miles of replacement fencing and 52 miles of construction where there were no barriers before. The wall became a focal point of his presidency, a staging ground for political rallies and a symbol of the administration's controversial immigration crackdowns.

On the campaign trail, President Biden vowed not to build another foot. And he swiftly halted construction once he took office.

A big question still hasn't been answered, months into his presidency: What will happen at sites where construction was underway?

Fencing currently covers 706 miles of the 1,954-mile US-Mexico border. We recently visited four locations along that stretch where wall construction had started, but has been paused since Biden became president.



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So far, the new administration isn't saying what will happen next in any of these places.

But people who live and work in the area have a lot to say about what they want to see.

Here's what we saw, and what they told us:

Stop 1: The view from the end of the road

This is about as far as the border wall construction got about 15 miles east of Nogales, Arizona, in the Patagonia Mountains. What you see now is a path carved through a pristine desert landscape.





It's a scene that's all too familiar to environmental activist Laiken Jordahl. A former park ranger, he's spent the last four years campaigning against the border wall in these remote areas of Arizona.



Here's how he describes the landscape:



"It's kind of a bizarre scene because we've got this huge amount of devastation, this massive swath of land that's been blasted open, and nobody knows what's gonna happen next."

Laiken Jordahl, environmental activist

Customs and Border Protection has said border wall projects went through "Environmental Stewardship Plans" to analyze and minimize the environmental impact, including studies of how wildlife may be affected by the projects.

Jordahl says he's seen enough.



"We want to see these contracts canceled, and we want to see the remaining billions of dollars left in those contracts used to restore and revegetate this beautiful landscape."

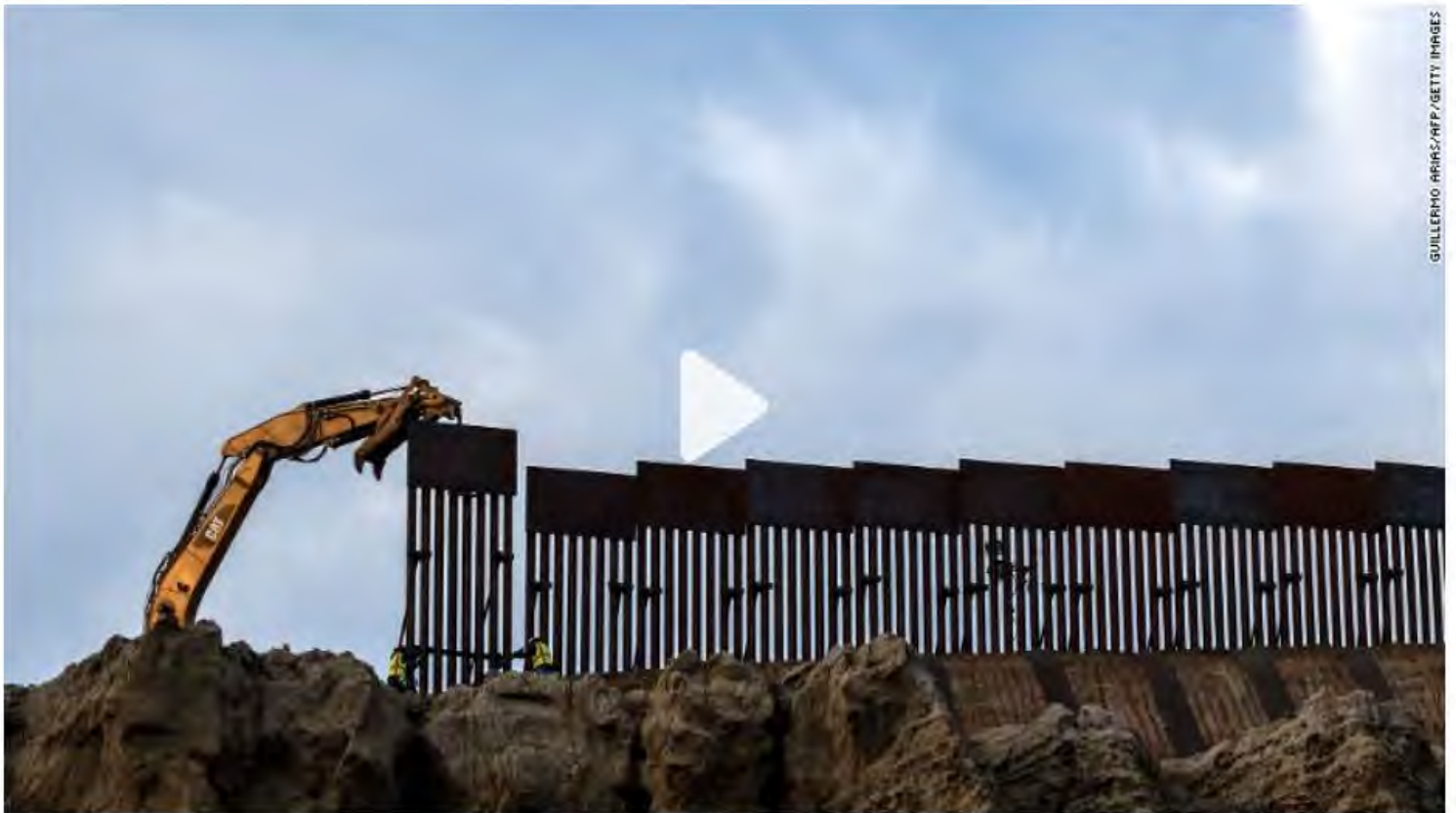
Leiken Jordahl, environmental activist

Stop 2: Tire tracks in the dirt, but no activity to be found

At Coronado National Memorial in Arizona, the tire tracks in the dirt are a reminder of the heavy construction equipment that was here just a few months ago.



Back in December, crews were feverishly working to finish erecting a stretch of wall here.



Border wall construction presses on in Trump's final days 05:23

Now, the roads nearby are a blocked off, so we can't get close enough to see what they built.

But this much is clear: The landscape in the area has already changed dramatically.





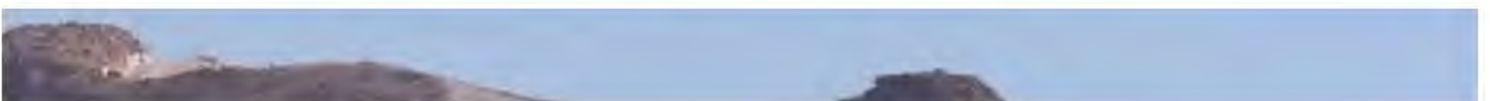
Stop 3: A scarred mountainside and a half-built wall

At Guadalupe Canyon, construction crews were busy at work the last time we visited. All you could hear were the sounds of heavy machinery, construction crews and explosive detonations blasting into the mountains. Now, it's eerily quiet.

Construction has stopped. And you can see a scarred mountainside, a half-built wall and massive amounts of steel -- seemingly abandoned. Now remnants of old steel border barriers are blocking access to the new wall.



For Jordahl and other anti-border wall activists, the question is, how do you repair a mountain that now looks like this?





"It is enraging. We have watched thousands of pounds of dynamite be detonated in wilderness areas, in corridors for endangered species, in places where there is not frequent migration from people or smugglers. ... They have cut through an entire mountain range to build a small section of wall that to someone in DC was just another mile on the tally."

Laiken Jordahl, environmental activist

Stop 4: A scene one sheriff calls 'foolish'

In Del Rio, Texas, Val Verde County Sheriff Joe Frank Martinez took us to what's supposed to be a two-mile stretch of border wall. So far, only a few hundred yards have been built.

Construction equipment is still on site. Deep trenches are dug out.



"About January the 24th everything stopped. ... To me, it's just -- just crazy."

Joe Frank Martinez, Val Verde County sheriff

You can still see the smaller fence that used to guard this stretch of border. And that did the trick, Martinez says. Crime, burglaries and theft went down as the structure rerouted smuggling activity and gave Border Patrol agents more time to respond. But now that this new structure -- a taller, 30-foot fence -- is half-built, the sheriff hopes it will be finished.



"I just think it's foolish to leave this project as it is. My understanding is that they're

going to continue in the near future, but that's yet to be seen."

Joe Frank Martinez, Val Verde County sheriff

And there's one thing he knows he doesn't want to see: all the fencing being taken down -- an idea some critics of the border wall have suggested.

"If that happens, then we're going to go back 20-30 years, where you're going to get masses of people coming through here. Crime rate in my community will go up, because there's no structure here."

Joe Frank Martinez, Val Verde County Sheriff

In one of his first actions as President, Biden ordered a pause on wall construction and called for a review of projects and a plan to redirect funds within 60 days. Customs and Border Protection, in coordination with the US Army Corps of Engineers, says that to comply with the President's proclamation it's suspended wall construction projects "except for activities that are safety related."

The 60-day review period ended more than a month ago. But pressed for answers on its border wall plans in recent days, the Biden administration hasn't said much.

"Federal agencies are continuing to review wall contracts and develop a plan to submit to the president soon -- it is -- it is paused," White House press secretary Jen Psaki recently told reporters.

On Friday, the administration announced it's taking steps to send billions of dollars back to the Pentagon, canceling all contracts on the border that used funds originally intended for military missions and functions.

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The administration's latest funding request to Congress includes \$1.2 billion for border infrastructure, but no additional funds for wall construction.

CNN's Ed Lavandera, Ashley Killough, Dave Ruff, Gregg Canes and Joel De La Rosa reported from the US-Mexico border, CNN's Catherine E. Shoichet reported from Arlington, Virginia and CNN's Madeleine Stix reported from New York. CNN's Priscilla Alvarez contributed to this report.

Exhibit F

US on track to encounter record 2 million migrants on the southern border, government estimates show

By [Priscilla Alvarez](#), CNN

Updated 2:44 PM ET, Wed March 31, 2021

Migrants, who were caught trying to come into the United States, are led by a US Customs and Border Protection agent, second from left, at the McAllen-Hidalgo International Bridge while being deported to Reynosa, Mexico, on Thursday, March 18, 2021, in Hidalgo, Texas.

(CNN) — The US is on track to encounter more than 2 million migrants at the US-Mexico border by the end of the fiscal year, according to internal government estimates reviewed by CNN, marking a record high.

The projections could be subject to change in the event of policy modifications or other changes in Latin America. US Border Patrol encounters are also expected to be largely made up of single adults, who are being turned away at the US southern border as soon as they're encountered under a public health order, and as a result, might also account for repeat crossers.

But combined, the data -- based on preliminary reporting as of this month -- illustrates the continuing challenge for the Biden administration, which has already faced a series of hurdles on the US-Mexico border, particularly with unaccompanied children and migrant families.

Data reviewed by CNN shows that up to 1.1 million single adults are expected through September, along with up to around 828,000 families and more than 200,000 unaccompanied children. Border Patrol encounters are expected to continue to rise month-by-month, according to the projections, which can vary.

Related Article: [CBP deploying more agents to US-Mexico border amid influx of](#)

migrants

The last time Border Patrol apprehensions surpassed 1 million was in fiscal year 2006, according to publicly available data from Customs and Border Protection. Border Patrol arrests also climbed during the 2019 border crisis, but [fell short of 900,000](#).

Deputy Chief of the Border Patrol Raul Ortiz told reporters Tuesday that the agency expects to encounter more than a million migrants this fiscal year.

Homeland Security Secretary Alejandro Mayorkas also warned of the uptick in mid-March, saying: "We are on pace to encounter more individuals on the southwest border than we have in the last 20 years. We are expelling most single adults and families. We are not expelling unaccompanied children."

CNN reached out to the Department of Homeland Security. Customs and Border Protection pointed to Ortiz's comments.

It's difficult to compare today's situation with those of recent years because of the drastically different circumstances, in part relating to the coronavirus pandemic. There are several factors at play -- including deteriorating conditions in Latin America, pent-up demand to enter the US and a perceived relaxation of enforcement under President Joe Biden -- that are driving migrants to the border at what appears to be an accelerated pace.

The administration is also relying on a public health law known as Title 42 that was invoked under former President Donald Trump and allows border authorities to turn back migrants encountered at the US-Mexico border, either to Mexico or their country of origin. Unaccompanied children are not subject to the policy.

These projections could also include a high number of people crossing the border twice or multiple times. In February, around 25% of people encountered at the border had crossed more than once, up from 7% for all fiscal year 2019, the most recent annual data available.

"We are seeing higher than usual recidivism rates, as a result of COVID protocols. So the number of encounters, while they impact our operations at Border Patrol, they also can seem to overstate the migrant flows that we are seeing," a CBP official said earlier this month.

In his first news conference, Biden noted that fluctuations in migration flows are common.

"It happens every single, solitary year: There is a significant increase in the number of people coming to the border in the winter months of January, February, March. That happens every year," he said.

Biden also said his administration is in discussions with Mexico to have the country receive migrant families expelled by the US under the pandemic-related policy, indicating the pressure the US is placing on Mexico to help stem the flow of migration to the US.

"Mexico is refusing to take them back. They're saying they won't take them back -- not all of them," Biden said, when asked why some families weren't being returned. "We're in negotiations with the President of Mexico. I think we're going to see that change. They should all be going

back. All be going back. The only people we're not going to let sitting there on the other side of the Rio Grande by themselves with no help are children."

Families from Mexico and the Northern Triangle countries are sent back to Mexico unless the country does not have the capacity to receive them, the Department of Homeland Security said in a statement this month. If Mexico won't take the families, they are processed into the US.

Measures taken in conjunction with Mexico and other Latin American countries could help the administration as it faces an ongoing influx of migrants. But it's still likely to be a pressing challenge for officials, as evidenced by the growing number of children.

Over recent days, the Health and Human Services Department, which is charged with the care of migrant children, announced [a string of new facilities](#), leaning on convention centers, military sites and influx shelters to accommodate children.

But even as those beds come online, [more children are being encountered](#) daily along the border, leading to [overcrowding in border facilities](#).

"What bogs us down is the fact that we're having to take care of 1,200 kids. We're already done. We already completed the Border Patrol process, so if HHS would be able to take these kids off of our hands then it would be better for everybody," acting Executive Officer for Rio Grande Valley Operational Programs Division Oscar Escamilla told reporters during a tour of a temporary border facility Tuesday.

"We're not in the business of dentition. We're forced into the business because we can't turn them over to anybody," he added.

CNN's Geneva Sands contributed to this report.

Exhibit G



From India, Brazil and Beyond: Pandemic Refugees at the Border

Fleeing virus-devastated economies, migrants are traveling long distances to reach the United States and then walking through gaps in the border wall. The Arizona desert has become a favorite crossing point.

Ariana Drexler for The New York Times



By Miriam Jordan

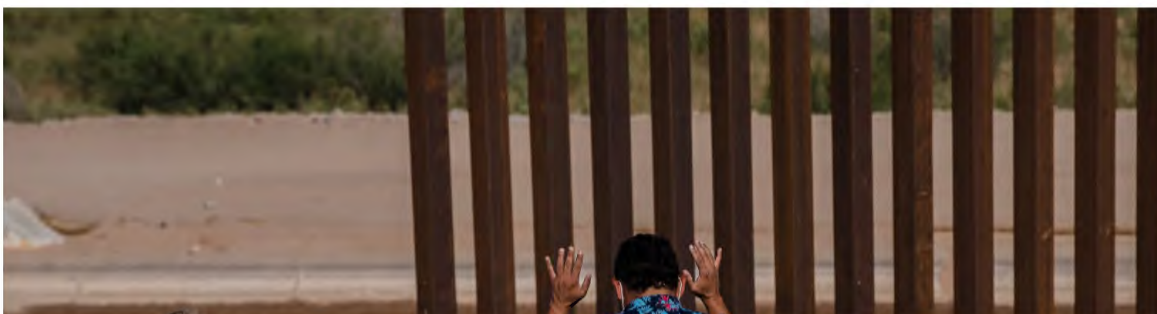
Published May 16, 2021 Updated June 7, 2021

YUMA, Ariz. — Standing by the hulking border wall, a U.S. Border Patrol agent watched as a car dropped off passengers at the edge of a road on the Mexican side. “Oh, no,” he muttered. “Here come some more.”

In the next hours, dozens of people would descend a bare hillock, pass a puddle where the Colorado River trickles and, without fanfare, pass through a gap in the rust-beam barrier that soars between the United States and [Mexico](#). They had completed the final leg of journeys that began weeks or months earlier in Brazil, Cuba, India and Venezuela.

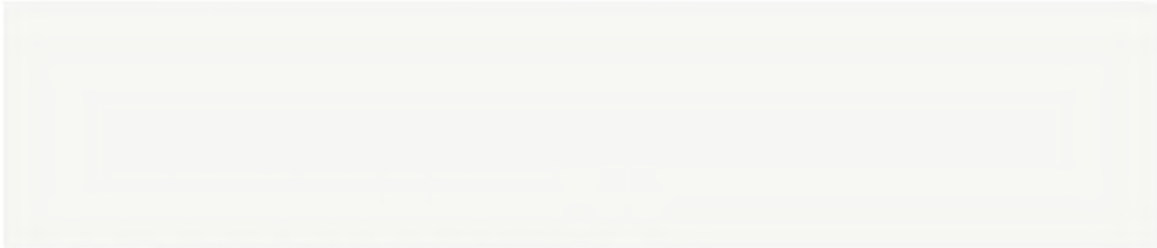
Carrying dusty backpacks and dreams of new jobs in new cities, the unauthorized migrants did not sprint across the road to hide in the vast alfalfa fields, as so many border crossers have in the past. Many of them walked toward the agent, arms raised in surrender, confident that they would not be turned away. Javier Gomez fell to his knees and prayed, his daughter, Maria, by his side.

“We sold our house, everything, to come,” said Mr. Gomez, an itinerant salesman whose family left Venezuela three months ago to make the journey northward over land. “We are blessed to have made it.”





Javier and Maria Gomez said a prayer on the U.S. side of the border wall after crossing from Mexico. Ariana Drehsler for The New York Times



Natasha Gomez cried near the opening in the border wall in Yuma, Ariz. The Gomez family traveled from Venezuela to the U.S. border. Ariana Drehsler for The New York Times

The Biden administration continues to grapple with swelling numbers of migrants along the southwestern border. In April alone, 178,622 people were encountered by the Border Patrol, the highest number in 20 years.

Most of them are from Central America, fleeing gang violence and natural disasters.

But the past few months have also brought a much different wave of migration that the Biden administration was not prepared to address: pandemic refugees.

They are people arriving in ever greater numbers from far-flung countries where the coronavirus has caused unimaginable levels of illness and death and decimated economies and livelihoods. If eking out an existence was challenging in such countries before, in many of them it has now become almost impossible.

According to official data released this week, 30 percent of all families encountered along the border in April hailed from countries other than Mexico and the Central American countries of Guatemala, Honduras and El Salvador, compared to just 7.5 percent in April 2019, during the last border surge.

The coronavirus pandemic has had far-reaching consequences for the global economy, erasing hundreds of millions of jobs. And it has disproportionately affected developing countries, where it could set back decades of progress, according to economists. About 13,000 migrants have landed in Italy, the gateway to Europe, so far this year, three times as many as in the same period last year.

At the U.S.-Mexico border in recent months, agents have stopped people from more than 160 countries, and the geography coincides with the path of the virus's worst devastation.

More than 12,500 Ecuadoreans were encountered in March, up from 3,568 in January. Nearly 4,000 Brazilians and more than 3,500 Venezuelans were intercepted, up from just 300 and 284, respectively, in January. The numbers in coming months are expected to be higher.

A Border Patrol agent looking for undocumented migrants at an opening in the border wall. [AP Photo/Chris Wedel](#)

From India and elsewhere in Asia, they embark on Phileas Fogg journeys. Some reported taking buses in their hometowns to a big city, like Mumbai, where they boarded planes to Dubai and then connected through Moscow, Paris and Madrid, finally flying to Mexico City. From there, they embarked on the two-day bus ride to reach the Mexico-U.S. border.

Many of them are entering the United States through wide openings in the border wall near Yuma, sparing them from the risky routes through remote desert regions, where migrants frequently lose their bearings, or across the Rio Grande in Texas, where migrants occasionally drown.

Border Patrol agents working in the Yuma sector said the number of migrants arriving there now dwarfs the surge of Central Americans two years ago that prompted some of the harsh immigration measures imposed by former President Donald J. Trump. They said they were struck by how far people had traveled.

U.S. asylum law grants protection to those suffering persecution on account of their race, religion, nationality, political opinion or membership in a particular social group.

But large numbers of migrants have been driven to the U.S. border by economic hardship in their home countries, and now the pandemic has widened that circle. Though no records are kept at the border on the reasons people have cited in choosing to move, interviews with many of those arriving at the border, along with Border Patrol officials, shelter operators and immigration scholars, suggested that the job collapse brought about by the coronavirus — coupled with the Biden administration's more welcoming policies — is driving much of the new surge.

Most migrants are being released to await immigration hearings that could take years, and if they fail to win asylum, many may wind up staying anyway, adding to the millions of immigrants living in the United States without permission.

A family from Brazil walked up an embankment toward the border wall. [AP Photo/Chris Wedel](#)

Border Patrol officers questioned undocumented migrants who crossed through a gap in the border wall from Mexico into the U.S. [Arizona Republic](#), July 12, 2021.

Diego Piña Lopez, who runs Casa Alitas, a shelter in Tucson, Ariz., that receives migrants from Yuma after they have been processed by the Border Patrol, has had to expand its language and cultural resources to handle the migrants passing through. “We never worked with such large numbers with this diversity,” he said, citing Arabic, Haitian Creole, Hindi and Portuguese speakers.

The spike in Arizona prompted Gov. Doug Ducey to declare a state of emergency in several counties last month and to deploy the National Guard along the border. Republican lawmakers have been sharply critical of the admission of [tens of thousands of young migrants](#), along with a large number of families, who would have been turned back under the Trump administration. Even Senator Mark Kelly, a Democrat, recently criticized President Biden for not addressing “the immediate crisis at the border.”

During a single weekend in early May, agents in the Yuma area intercepted 1,600 migrants.

“So many people around the world saw their standard of living slide backward, it’s no surprise that they would jump at the chance to get into the U.S. when they hear that others have managed to cross from Mexico successfully,” said Andrew Selee, president of the nonpartisan Migration Policy Institute.

“I saw some of the same dynamics in 2019,” he said. “But it was on a much smaller scale.”

Opportunity and despair

While most of the migrants do not necessarily understand the intricacies of U.S. border policy, many said in interviews that they perceived a limited-time offer to enter the United States. Friends and family members already in the country, along with smugglers eager to cash in, have assured them that they will not be turned away — and this is proving to be true.

“What we’re hearing back home is that the new president is facilitating entry, and there is demand for labor,” said Rodrigo Neto, who came from Brazil, where the pandemic killed his business and left him overwhelmed by debt. “I couldn’t pass up this opportunity.”

Mr. Neto, 55, shuttered his electrical shop, sold his car and gathered up his savings to pay for the journey.

Like many people from Brazil and other countries ravaged by the pandemic, he was unable to get a visa to enter the United States. Instead, he flew from São Paulo to Mexico City and then to Tijuana, where a driver working for a smuggling network met his group. They were then ferried to the side of the road in Algodones, Mexico, across the border from Arizona, where they were deposited one recent morning.

From there it took them just 10 minutes to reach County Road 8, where a Border Patrol agent stood near an opening in the wall.

“Each week, between 1,200 and 1,500 Brazilians are flying into Tijuana, but it’s not for tourism,” Jody Hice, a Republican congressman from Georgia, said on Twitter after being briefed by the Border Patrol during a recent tour of the border.

A young girl being transported to an immigrant processing center by Border Patrol agents in Yuma, Ariz.

While the U.S. government attempts to [swiftly send back migrants](#) caught illegally crossing the border under an emergency pandemic health order known as [Title 42](#), Mexico has refused to accept many migrants from South America, Asia and the Caribbean. In many cases, those migrants have been released in the United States with a notice to appear later in an immigration court — a practice that is acting as a new magnet.

“Title 42 has created a massive business for cartels,” said Alex Miller, a managing attorney with the Florence Project, an immigration legal-aid organization in Arizona. “People who enter between ports of entry have increasingly gotten through, particularly in Yuma.”

Most of the long-distance migrants have been crossing in the Yuma sector, where openings in the fence are there intentionally, to enable the Bureau of Reclamation to reach agricultural canals near the Colorado River, or in places where the border fence is just waist high, enough to block vehicles but not people on foot.

But some migrants have been scaling the newly reinforced, 30-foot bollard boundary right in the vicinity of a plaque where Mr. Trump commemorated the 200th mile of his border wall system.

Accommodating the surge

A huge tent has gone up in the parking lot behind the Border Patrol's headquarters in Yuma to accommodate migrants taken into custody, who must be interviewed and undergo background checks.

Some are transferred to Immigration and Customs Enforcement detention. But most are simply being released to nonprofit aid centers, where they spend a day or two before traveling to join friends and relatives elsewhere in the United States.

Measures imposed under the Obama administration, such as [fitting migrants with ankle monitors](#) to ensure that they attend court hearings later, are only sparingly used.

Along the gravel road heading south from Yuma, signs of recent crossings are ubiquitous: water bottles, shirts, beanies, a rattle. An abandoned blue backpack was filled with disposable diapers and baby clothes. In one spot, two mattresses were parked against the U.S. side of the wall to ensure a soft landing for migrants willing to take a leap.

On one recent morning, two families from India made their way across the border, the men with their arms raised, their wives and children following behind. One family said they hoped to reach Georgia; the other was Florida-bound.

Families from India surrendered to a Border Patrol officer after crossing into the U.S.

Discarded clothing left in the sand along the border wall.

They had flown through five countries to reach Mexico City, where they had boarded a bus to the U.S.-Mexico border. A cabdriver connected to coyotes had deposited them on a road from which they walked to a gap in the wall.

Close behind them came a Cuban man headed for Miami.

A few minutes later, a little girl with a Mickey Mouse sweater dangling from her waist came through with three adults, headed for Boston, where friends and jobs awaited.

Then came the Gomez family, the ones who had come from Venezuela, dragging wheeled baggage. Mr. Gomez's wife, Natasha, held her three grandchildren and wept. "In Venezuela, there is no food, no electricity, no medicine, no work," she said.

Border Patrol agents checked documents and jotted down names of the migrants who, to escape the oppressive heat, had gathered in the shade cast by the wall.

Soon a van arrived to ferry them to the Border Patrol station — and an uncertain, but hopeful, new chapter.

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Exhibit H

Biden Admin Considers Restarting Border Wall Construction To ‘Plug Gaps’ Amid Biden’s Border Crisis: Report

By **Ryan Saavedra** • Apr 6, 2021 DailyWire.com • [f](#) [t](#) [↑](#)



JIM WATSON/AFP via Getty Images

The Biden administration is reportedly considering restarting construction of former President Donald Trump’s wall along the U.S.-Mexico border as the administration struggles to maintain control of the worsening border crisis.

Biden Department of Homeland Security Secretary Alejandro Mayorkas said during a conversation with ICE employees last week that the administration was considering finishing “gaps in the wall.”





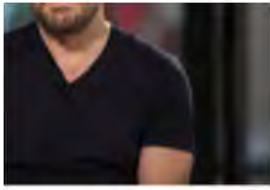
“It’s not a single answer to a single question. There are different projects that the chief of the Border Patrol has presented and the acting commissioner of CBP presented to me,” Mayorkas said, according to notes of the ICE session reviewed by The Washington Times. “The president has communicated quite clearly his decision that the emergency that triggered the devotion of DOD funds to the construction of the border wall is ended. But that leaves room to make decisions as the administration, as part of the administration, in particular areas of the wall that need renovation, particular projects that need to be finished.”

The Times said that Mayorkas specifically mentioned those “particular projects” included “gaps,” “gates,” and areas “where the wall has been completed but the technology has not been implemented.”

The report noted that the new completed section of border wall is more than just a wall as it includes technology that allows authorities to detect incursions and features “high-speed roads” that allows for rapid response. The report also highlighted recent polling that showed that the majority of Americans, 53% overall, support construction of the border wall.

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In 1982, One Georgia Town
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Gun. Here's What Happened

By Sharif Khan



'The Most Conservative Sport':
5 UFC Stars Who Don't Hide
Their Right-Wing Opinions

By Sharif Khan



OWENS: It's Time To
Apologizing.

By Candace Owens

Politico reported last month that Biden was under investigation by the Government Accountability Office for halting billions of dollars in payments that were scheduled to go out to companies that had been contracted to finish building the wall.

"Now the Government Accountability Office is launching a review to determine whether the new president broke the law by freezing the money in violation of budget rules designed to keep Congress in control of the cash flow," Politico reported. "The probe highlights the challenge presidents have historically faced in fulfilling campaign promises that require money to be spent — or suspended — at odds with Congress' intent."

The report comes as Biden's border crisis has overwhelmed the U.S.-Mexico border, promoting backlash against Biden from Republicans, Democrats, and even the president of Mexico.



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Forty Senate Republicans said in a letter to the Government Accountability Office that in “the weeks that followed” Biden suspending construction of the border wall that “operational control of our southern border was comprised and a humanitarian and national security crisis has ensued.”

The letter added:

The President’s actions directly contributed to this unfortunate, yet entirely avoidable, scenario. They are also a blatant violation of federal law and infringe on Congress’s constitutional power of the purse. We write regarding these actions. We believe they violated the Impoundment Control Act (ICA), as interpreted by your office, and we request your legal opinion on the matter. Prompt action to end these violations is required to restore order at the border.

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FOR UP TO 8 HOURS



A new poll released this week showed that the majority of Americans do not approve of the job that Biden is doing on the border.

Exhibit I

Biden to bring in asylum seekers forced to wait in Mexico under Trump program

By Ted Hesson, Mimi Dwyer

6 MIN READ



WASHINGTON (Reuters) - The U.S. government next week will begin to gradually process thousands of asylum seekers forced to wait in Mexico under a controversial program put in place by former President Donald Trump, officials said.



The moves are part of a plan by the administration of President Joe Biden to end the program, known as the Migrant Protection Protocols (MPP), an effort complicated by the ongoing coronavirus pandemic and concerns over illegal immigration.

The Trump administration launched the program in 2019 as part of a wide-ranging crackdown on the ability to seek asylum in the United States, which Trump officials depicted as rife with fraud and meritless claims.

The initiative forced more than 65,000 non-Mexican asylum seekers back across the border to wait for their U.S. court hearings, although far fewer are believed to still be waiting in Mexico.

The Biden administration will begin by working to process about 25,000 migrants with active claims in the program, officials said on Thursday. The new guidelines will require migrants to register online or via phone, be tested for the coronavirus in Mexico and then come to a U.S. port of entry on a specific day.

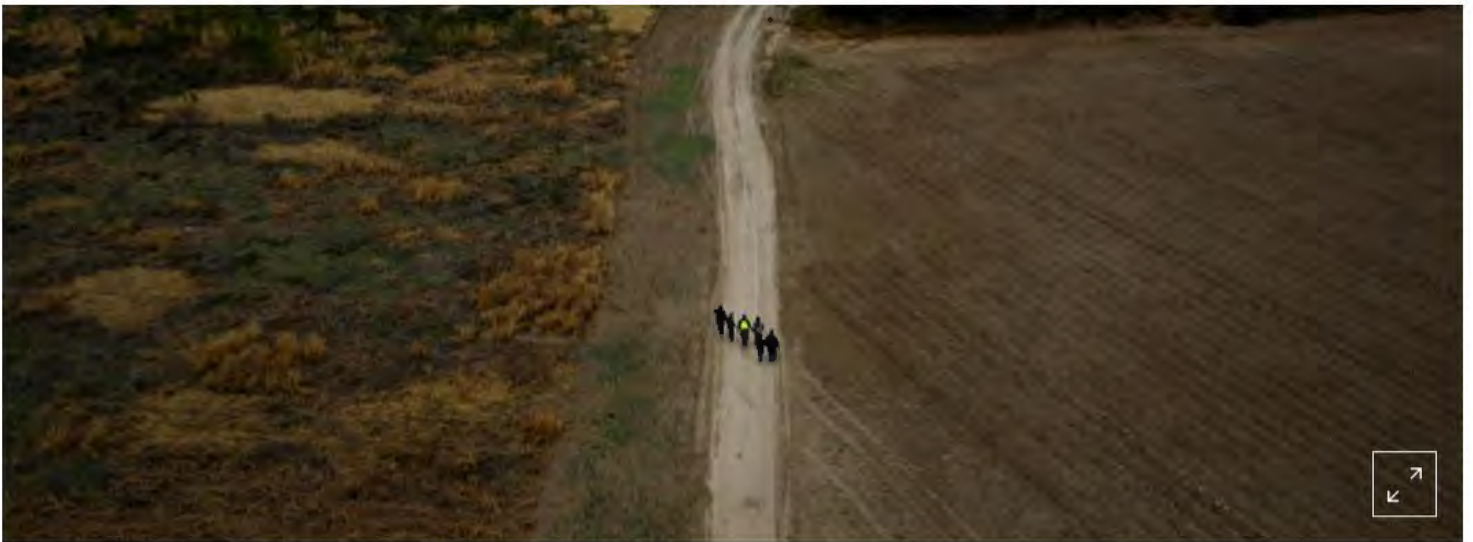
The news was welcomed with relief in a sprawling migrant camp in the Mexican city of Matamoros, just across the border from Brownsville, Texas.

“I’ve been reading all the articles,” said Salvadoran asylum seeker Sandra Andrade, who has been waiting in Mexico for over a year to resolve her U.S. court case. “Honestly, I have no words for how I’m feeling right now!”

Biden vowed on the campaign trail to roll back restrictive Trump-era immigration policies, including MPP, which is informally known as “remain in Mexico.” His administration suspended new entries into the program when he took office on Jan. 20, but did not immediately put forward a plan to bring the people enrolled in it into the United States. Some have been waiting for as long as two years.

Republicans embracing Trump’s hardline immigration views have criticized the ending of MPP and could use it as fuel for political attacks if illegal border crossings increase on Biden’s watch.





FILE PHOTO: A group of migrants walk past plowed farmland after crossing into the United States from Mexico, as they make their way towards a gap in the border wall to surrender to US border patrol, near Penitas, Texas, U.S., January 10, 2019. REUTERS/Adrees Latif

Top Biden officials have stressed in recent weeks that migrants should not attempt to enter the United States, saying they need time to build up the capacity to process more asylum seekers.

“Individuals who are not eligible under this initial phase should wait for further instructions and not travel to the border,” Homeland Security Secretary Alejandro Mayorkas said in a statement accompanying the MPP announcement. “Due to the current pandemic, restrictions at the border remain in place and will be enforced.”

Mexican President Andres Manuel Lopez Obrador echoed that message on Friday, saying migrants should not think “the gates of the northern border are open” or believe human smugglers who say as much.

During a call with reporters on Thursday evening, three Biden administration officials described the plans to process MPP enrollees, with the first phase beginning on Feb. 19.

The officials, all of whom requested anonymity, only outlined procedures for people with active cases in U.S. immigration courts. Those with non-active cases, many of whom may have returned to their home countries, “will have other opportunities,” one of the officials said

Under the plan, migrants will need to register with international organizations over the internet or by phone and await instructions. One of the organizations will also handle coronavirus testing in Mexico, another official said.

Biden officials declined to identify the organizations on Thursday. However, a spokesman for the United Nations High Commissioner for Refugees said the refugee agency would work with both the U.S. and Mexican governments to ensure migrants in the program could safely enter the United States.



STARTING SMALL

The migrants' claims will initially be heard at three ports of entry along the border, with organizations working to identify those in line the longest and those deemed particularly vulnerable.

At two of the ports, the Biden administration expects to process 300 people per day at each port. The effort will expand to additional ports over time.

“We will start small,” said one of the officials.

The Biden officials declined to name the ports where the administration planned to begin processing, citing concerns that people would rush to those locations.

Migrants entering the United States through the program will not be placed in detention centers, but could be subject to an alternative form of monitoring, including ankle bracelets.

The United States developed the strategy in close coordination with Mexican authorities, the official said.

Even while Biden moves to end one Trump program, he faces growing pressure from

advocates to end another known as Title 42. The pandemic-era order allows U.S. authorities to rapidly expel to Mexico migrants caught crossing the border illegally, a practice advocates say bypasses due process.

The Biden administration has not said whether it will end that program. More than 400,000 migrants have been expelled under the measure since it became effective in March 2020, although many of those caught are repeat border crossers and therefore counted multiple times.

The effort to process MPP enrollees comes as arrests of migrants at the U.S.-Mexico border have been increasing after a steep drop at the beginning of the coronavirus pandemic.

Reporting by Ted Hesson in Washington; Mimi Dwyer in Los Angeles; Additional reporting by Laura Gottesdiener in Monterrey, Mexico, and Lizbeth Diaz in Mexico City; Editing by Ross Colvin and Aurora Ellis

Exhibit J

Executive Order on 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

FEBRUARY 02, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, it is hereby ordered as follows:

Section 1. Policy. For generations, immigrants have come to the United States with little more than the clothes on their backs, hope in their hearts, and a desire to claim their own piece of the American Dream. These mothers, fathers, sons, and daughters have made our Nation better and stronger.

The United States is also a country with borders and with laws that must be enforced. Securing our borders does not require us to ignore the humanity of those who seek to cross them. The opposite is true. We cannot solve the humanitarian crisis at our border without addressing the violence, instability, and lack of opportunity that compel so many people to flee their homes. Nor is the United States safer when resources that should be invested in policies targeting actual threats, such as drug cartels and human traffickers, are squandered on efforts to stymie legitimate asylum seekers.

Consistent with these principles, my Administration will implement a multi-pronged approach toward managing migration throughout North and Central America that reflects the Nation's highest values. We will work closely with

civil society, international organizations, and the governments in the region to: establish a comprehensive strategy for addressing the causes of migration in the region; build, strengthen, and expand Central and North American countries' asylum systems and resettlement capacity; and increase opportunities for vulnerable populations to apply for protection closer to home. At the same time, the United States will enhance lawful pathways for migration to this country and will restore and strengthen our own asylum system, which has been badly damaged by policies enacted over the last 4 years that contravened our values and caused needless human suffering.

Sec. 2. United States Strategies for Addressing the Root Causes of Irregular Migration and for Collaboratively Managing Migration in the Region. (a) The Assistant to the President for National Security Affairs

(APNSA), in coordination with the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the heads of any other relevant executive departments and agencies, shall as soon as possible prepare:

(i) the United States Strategy for Addressing the Root Causes of Migration (the "Root Causes Strategy"); and

(ii) the United States Strategy for Collaboratively Managing Migration in the Region (the "Collaborative Management Strategy").

(b) The Root Causes Strategy shall identify and prioritize actions to address the underlying factors leading to migration in the region and ensure coherence of United States Government positions. The Root Causes Strategy shall take into account, as appropriate, the views of bilateral, multilateral, and private sector partners, as well as civil society, and it shall include proposals to:

(i) coordinate place-based efforts in El Salvador, Guatemala, and Honduras (the "Northern Triangle") to address the root causes of migration, including by:

(A) combating corruption, strengthening democratic governance, and advancing the rule of law;

(B) promoting respect for human rights, labor rights, and a free press;

(C) countering and preventing violence, extortion, and other crimes

perpetrated by criminal gangs, trafficking networks, and other organized criminal organizations;

(D) combating sexual, gender-based, and domestic violence; and

(E) addressing economic insecurity and inequality;

(ii) consult and collaborate with the Office of the United States Trade Representative, the Secretary of Commerce, and the Secretary of Labor to evaluate compliance with the Dominican Republic-Central America Free Trade Agreement to ensure that unfair labor practices do not disadvantage competition; and

(iii) encourage the deployment of Northern Triangle domestic resources and the development of Northern Triangle domestic capacity to replicate and scale efforts to foster sustainable societies across the region.

(c) The Collaborative Management Strategy shall identify and prioritize actions to strengthen cooperative efforts to address migration flows, including by expanding and improving upon previous efforts to resettle throughout the region those migrants who qualify for humanitarian protection. The Collaborative Management Strategy should focus on programs and infrastructure that facilitate access to protection and other lawful immigration avenues, in both the United States and partner countries, as close to migrants' homes as possible. Priorities should include support for expanding pathways through which individuals facing difficult or dangerous conditions in their home countries can find stability and safety in receiving countries throughout the region, not only through asylum and refugee resettlement, but also through labor and other non-protection-related programs. To support the development of the Collaborative Management Strategy, the United States Government shall promptly begin consultations with civil society, the private sector, international organizations, and governments in the region, including the Government of Mexico. These consultations should address:

(i) the continued development of asylum systems and resettlement capacities of receiving countries in the region, including through the provision of funding, training, and other support;

(ii) the development of internal relocation and integration programs for internally displaced persons, as well as return and reintegration programs for returnees in relevant countries of the region; and

(iii) humanitarian assistance, including through expansion of shelter networks, to address the immediate needs of individuals who have fled their homes to seek protection elsewhere in the region.

Sec. 3. Expansion of Lawful Pathways for Protection and Opportunity in the United States. (a) The Secretary of State and the Secretary of Homeland Security shall promptly review mechanisms for better identifying and processing individuals from the Northern Triangle who are eligible for refugee resettlement to the United States. Consideration shall be given to increasing access and processing efficiency. As part of this review, the Secretary of State and the Secretary of Homeland Security shall also identify and implement all legally available and appropriate forms of relief to complement the protection afforded through the United States Refugee Admissions Program. The Secretary of State and Secretary of Homeland Security shall submit a report to the President with the results of the review.

(b) As part of the review conducted pursuant to section 3(a) of this order, the Secretary of Homeland Security shall:

(i) consider taking all appropriate actions to reverse the 2017 decision rescinding the Central American Minors (CAM) parole policy and terminating the CAM Parole Program, *see* “Termination of the Central American Minors Parole Program,” 82 Fed. Reg. 38,926 (August 16, 2017), and consider initiating appropriate actions to reinstitute and improve upon the CAM Parole Program; and

(ii) consider promoting family unity by exercising the Secretary’s discretionary parole authority to permit certain nationals of the Northern Triangle who are the beneficiaries of approved family-sponsored immigrant visa petitions to join their family members in the United States, on a case-by-case basis.

(c) The Secretary of State and the Secretary of Homeland Security shall promptly evaluate and implement measures to enhance access for individuals from the Northern Triangle to visa programs, as appropriate and consistent with applicable law.

Sec. 4. Restoring and Enhancing Asylum Processing at the Border. (a)

Resuming the Safe and Orderly Processing of Asylum Claims at United States Land Borders.

(i) The Secretary of Homeland Security and the Director of the Centers for Disease Control and Prevention (CDC), in coordination with the Secretary of State, shall promptly begin consultation and planning with international and non-governmental organizations to develop policies and procedures for the safe and orderly processing of asylum claims at United States land borders, consistent with public health and safety and capacity constraints.

(ii) The Secretary of Homeland Security, in consultation with the Attorney General, the Secretary of Health and Human Services (HHS), and the Director of CDC, shall promptly begin taking steps to reinstate the safe and orderly reception and processing of arriving asylum seekers, consistent with public health and safety and capacity constraints. Additionally, in furtherance of this goal, as appropriate and consistent with applicable law:

(A) The Secretary of HHS and the Director of CDC, in consultation with the Secretary of Homeland Security, shall promptly review and determine whether termination, rescission, or modification of the following actions is necessary and appropriate: “Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists,” 85 Fed. Reg. 65,806 (October 13, 2020); and “Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes,” 85 Fed. Reg. 56,424 (September 11, 2020) (codified at 42 C.F.R. 71.40).

(B) The Secretary of Homeland Security shall promptly review and determine whether to terminate or modify the program known as the Migrant Protection Protocols (MPP), including by considering whether to rescind the Memorandum of the Secretary of Homeland Security titled “Policy Guidance for Implementation of the Migrant Protection Protocols” (January 25, 2019), and any implementing guidance. In coordination with the Secretary of State, the Attorney General, and the Director of CDC, the Secretary of Homeland Security shall promptly consider a phased strategy for the safe and orderly entry into the United States, consistent with public health and safety and capacity constraints, of those individuals who have been subjected to MPP for

(C) The Attorney General and the Secretary of Homeland Security shall promptly review and determine whether to rescind the interim final rule titled “Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims,” 83 Fed. Reg. 55,934 (November 9, 2018), and the final rule titled “Asylum Eligibility and Procedural Modifications,” 85 Fed. Reg. 82,260 (December 17, 2020), as well as any agency memoranda or guidance that were issued in reliance on those rules.

(D) The Attorney General and the Secretary of Homeland Security shall promptly review and determine whether to rescind the interim final rule titled “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,” 84 Fed. Reg. 63,994 (November 19, 2019), as well as any agency memoranda or guidance issued in reliance on that rule. In the interim, the Secretary of State shall promptly consider whether to notify the governments of the Northern Triangle that, as efforts to establish a cooperative, mutually respectful approach to managing migration across the region begin, the United States intends to suspend and terminate the following agreements:

(1) “Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims,” 84 Fed. Reg. 64,095 (July 26, 2019).

(2) “Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims,” 85 Fed. Reg. 83,597 (September 20, 2019).

(3) “Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Claims,” 85 Fed. Reg. 25,462 (September 25, 2019).

(E) The Secretary of Homeland Security shall promptly cease implementing the “Prompt Asylum Case Review” program and the “Humanitarian Asylum Review Program” and consider rescinding any orders, rules, regulations, guidelines or policies implementing those programs.

(F) The following Presidential documents are revoked:

- (1) Executive Order 13767 of January 25, 2017 (Border Security and Immigration Enforcement Improvements).
 - (2) Proclamation 9880 of May 8, 2019 (Addressing Mass Migration Through the Southern Border of the United States).
 - (3) Presidential Memorandum of April 29, 2019 (Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System).
 - (4) Presidential Memorandum of April 6, 2018 (Ending “Catch and Release” at the Border of the United States and Directing Other Enhancements to Immigration Enforcement).
 - (5) Presidential Memorandum of April 4, 2018 (Securing the Southern Border of the United States).
- (G) The Secretary of State, the Attorney General, and the Secretary of Homeland Security shall promptly take steps to rescind any agency memoranda or guidance issued in reliance on or in furtherance of any directive revoked by section 4(a)(ii)(F) of this order.
- (b) *Ensuring a Timely and Fair Expedited Removal Process.*
- (i) The Secretary of Homeland Security, with support from the United States Digital Service within the Office of Management and Budget, shall promptly begin a review of procedures for individuals placed in expedited removal proceedings at the United States border. Within 120 days of the date of this order, the Secretary of Homeland Security shall submit a report to the President with the results of this review and recommendations for creating a more efficient and orderly process that facilitates timely adjudications and adherence to standards of fairness and due process.
 - (ii) The Secretary of Homeland Security shall promptly review and consider whether to modify, revoke, or rescind the designation titled “Designating Aliens for Expedited Removal,” 84 Fed. Reg. 35,409 (July 23, 2019), regarding the geographic scope of expedited removal pursuant to INA section 235(b)(1), 8 U.S.C. 1225(b)(1), consistent with applicable law. The review shall consider our legal and humanitarian obligations, constitutional principles of due process and other applicable law, enforcement resources, the public interest,

and any other factors consistent with this order that the Secretary deems appropriate. If the Secretary determines that modifying, revoking, or rescinding the designation is appropriate, the Secretary shall do so through publication in the *Federal Register*.

(c) *Asylum Eligibility*. The Attorney General and the Secretary of Homeland Security shall:

(i) within 180 days of the date of this order, conduct a comprehensive examination of current rules, regulations, precedential decisions, and internal guidelines governing the adjudication of asylum claims and determinations of refugee status to evaluate whether the United States provides protection for those fleeing domestic or gang violence in a manner consistent with international standards; and

(ii) within 270 days of the date of this order, promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a “particular social group,” as that term is used in 8 U.S.C. 1101(a)(42)(A), as derived from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Exhibit K



U.S. Department of
Homeland Security

DHS Announces Process to Address Individuals in Mexico with Active MPP Cases

Release Date: February 11, 2021

[En español \(/news/2021/02/11/departamento-de-seguridad-nacional-dhs-anuncia-proceso-para-atender-individuos-en-m\)](#)

WASHINGTON – Building on a series of Executive Orders last week, the Biden Administration is announcing another step in our phased strategy to reform the nation’s immigration system. Beginning on February 19, the Department of Homeland Security (DHS) will begin phase one of a program to restore safe and orderly processing at the southwest border. DHS will begin processing people who had been forced to “remain in Mexico” under the Migrant Protection Protocols (MPP). Approximately 25,000 individuals in MPP continue to have active cases.

Individuals should not take any action at this time and should remain where they are to await further instructions. We will soon announce a virtual registration process that will be accessible from any location. Once registered, eligible individuals will be provided additional information about where and when to present themselves. Individuals should not approach the border until instructed to do so.

“As President Biden has made clear, the U.S. government is committed to rebuilding a safe, orderly, and humane immigration system,” said Secretary of Homeland Security Alejandro Mayorkas. “This latest action is another step in our commitment to reform immigration policies that do not align with our nation’s values. Especially at the border, however, where capacity constraints remain serious, changes will take time. Individuals who are not eligible under this initial phase should wait for further instructions and not travel to the border. Due to the current pandemic, restrictions at the border remain in place and will be enforced.”

Through a whole-of-government approach, DHS, the Department of State, and the Department of Justice will collaborate with international partners—including the Government

of Mexico and international and non-governmental organizations—to safely process eligible individuals to pursue their cases in the United States.

This new process applies to individuals who were returned to Mexico under the MPP program and have cases pending before the Executive Office for Immigration Review (EOIR). Individuals outside of the United States who were not returned to Mexico under MPP or who do not have active immigration court cases will not be considered for participation in this program and should await further instructions. Similarly, those individuals in the United States with active MPP cases will receive separate guidance at a later date.

This announcement should not be interpreted as an opening for people to migrate irregularly to the United States. Eligible individuals will only be allowed to enter through designated ports of entry at designated times. We will provide instructions in the coming days for how individuals with active MPP cases may remotely register for in-processing. We will continue to enforce U.S. immigration law and border security measures throughout this process.

The United States and our partners will employ all necessary safety precautions in accordance with the Centers for Disease Control and Prevention (CDC) guidance, including mandatory face coverings and social distancing. Individuals processed through this program will be tested for COVID-19 before entering the United States. DHS will only process individuals consistent with its capacity to safely do so while fully executing its important national security and trade and travel facilitation missions.

[A Fact Sheet announcing the process to address individuals outside the United States with active MPP cases \(/news/2021/02/18/fact-sheet-dhs-announces-process-address-individuals-outside-united-states-active\)](#) is also available.

Topics: [Border Security \(/topics/border-security\)](#), [Citizenship and Immigration Services \(/topics/immigration-and-citizenship-services\)](#), [Homeland Security Enterprise \(/topics/homeland-security-enterprise\)](#), [Immigration and Customs Enforcement \(/topics/immigration-enforcement\)](#), [Secretary of Homeland Security \(/topics/secretary-homeland-security\)](#).

Keywords: [Asylum \(/keywords/asylum-applications\)](#), [Immigration \(/keywords/immigration\)](#), [Immigration Enforcement \(/keywords/immigration-enforcement\)](#), [Immigration Reform \(/keywords/immigration-reform\)](#), [Migrant Protection Protocols \(MPP\) \(/keywords/migrant-protection-protocols-mpp\)](#), [President Biden \(/keywords/president-biden\)](#), [Secretary Alejandro Mayorkas \(/keywords/secretary-alejandro-mayorkas\)](#).

Last Published Date: February 19, 2021

Exhibit L

Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 1, 2021


MEMORANDUM FOR: Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection

Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Tracy L. Renaud
Acting Director
U.S. Citizenship and Immigration Services

FROM: Alejandro N. Mayorkas
Secretary

SUBJECT: **Termination of the Migrant Protection Protocols Program**



On January 25, 2019, Secretary of Homeland Security Kirstjen Nielsen issued a memorandum entitled “Policy Guidance for Implementation of the Migrant Protection Protocols.” Over the course of the Migrant Protection Protocols (MPP) program, the Department of Homeland Security and its components issued further policy guidance relating to its implementation. In total, approximately 68,000 individuals were returned to Mexico following their enrollment in MPP.¹

On January 20, 2021, then-Acting Secretary David Pekoske issued a memorandum suspending new enrollments in MPP, effective the following day.² On February 2, 2021, President Biden issued Executive Order 14010, 86 Fed. Reg. 8267, *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*. In this Executive Order, President Biden directed me, in coordination with the Secretary of State, the Attorney General, and the Director of the Centers for Disease Control and Prevention, to “promptly

¹ See “Migrant Protection Protocols Metrics and Measures,” Jan. 21, 2021, available at <https://www.dhs.gov/publication/metrics-and-measures>.

² Memorandum from David Pekoske, Acting Sec’y of Homeland Sec., *Suspension of Enrollment in the Migrant Protection Protocols Program* (Jan. 20, 2021).

Subject: Termination of the Migrant Protection Protocols Program**Page 2**

consider a phased strategy for the safe and orderly entry into the United States, consistent with public health and safety and capacity constraints, of those individuals who have been subjected to MPP for further processing of their asylum claims,” and “to promptly review and determine whether to terminate or modify the program known as the Migrant Protection Protocols.”³

On February 11, the Department announced that it would begin the first phase of a program to restore safe and orderly processing at the Southwest Border of certain individuals enrolled in MPP whose immigration proceedings remained pending before the Department of Justice’s Executive Office for Immigration Review (EOIR).⁴ According to Department of State data, between February 19 and May 25, 2021, through this program’s first phase approximately 11,200 individuals were processed into the United States. The Department is continuing to work with interagency partners to carry out this phased effort and to consider expansion to additional populations enrolled in MPP.

Having now completed the further review undertaken pursuant to Executive Order 14010 to determine whether to terminate or modify MPP, and for the reasons outlined below, I am by this memorandum terminating the MPP program. I direct DHS personnel to take all appropriate actions to terminate MPP, including taking all steps necessary to rescind implementing guidance and other directives or policy guidance issued to implement the program.

Background

Section 235(b)(2)(C) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2)(C), authorizes DHS to return to Mexico or Canada certain noncitizens who are arriving on land from those contiguous countries pending their removal proceedings before an immigration judge under Section 240 of the INA, 8 U.S.C. § 1229a. Historically, DHS and the legacy Immigration and Naturalization Service primarily used this authority on an ad-hoc basis to return certain Mexican and Canadian nationals who were arriving at land border ports of entry, though the provision was occasionally used for third country nationals under certain circumstances provided they did not have a fear of persecution or torture related to return to Canada or Mexico.

On December 20, 2018, the Department announced the initiation of a novel program, the Migrant Protection Protocols, to implement the contiguous-territory-return authority under Section 235(b)(2)(C) on a wide-scale basis along the Southwest Border. On January 25, 2019, DHS issued policy guidance for implementing MPP, which was subsequently augmented a few days later by guidance from U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. During the course of MPP, DHS and its components continued to update and supplement the policy, including through the “Supplemental Policy Guidance for Implementation of the Migrant Protection Protocols” issued on December 7,

³ Executive Order 14010, *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*, 86 Fed. Reg. 8267 (Feb. 2, 2021), available at <https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration>.

⁴ U.S. Department of Homeland Security, *DHS Announces Process to Address Individuals in Mexico with Active MPP Cases*, Feb. 11, 2021, available at <https://www.dhs.gov/news/2021/02/11/dhs-announces-process-address-individuals-mexico-active-mpp-cases>.

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2020 by the Senior Official Performing the Duties of the Under Secretary for Strategy, Policy, and Plans.

Under MPP, it was DHS policy that certain non-Mexican applicants for admission who arrived on land at the Southwest Border could be returned to Mexico to await their removal proceedings under INA Section 240. To attend removal proceedings, which were prioritized by EOIR on the non-detained docket, DHS facilitated program participants' entry into and exit from the United States. Due to public health measures necessitated by the ongoing COVID-19 pandemic, however, DHS and EOIR stopped being able to facilitate and conduct immigration court hearings for individuals enrolled in MPP beginning in March 2020.⁵

Following the Department's suspension of new enrollments in MPP, and in accordance with the President's direction in Executive Order 14010, DHS has worked with interagency partners and facilitating organizations to implement a phased process for the safe and orderly entry into the United States of certain individuals who had been enrolled in MPP.

Determination

In conducting my review of MPP, I have carefully evaluated the program's implementation guidance and programmatic elements; prior DHS assessments of the program, including a top-down review conducted in 2019 by senior leaders across the Department, and the effectiveness of related efforts by DHS to address identified challenges; the personnel and resource investments required of DHS to implement the program; and MPP's performance against the anticipated benefits and goals articulated at the outset of the program and over the course of the program. I have additionally considered the Department's experience to date carrying out its phased strategy for the safe and orderly entry into the United States of certain individuals enrolled in MPP. In weighing whether to terminate or modify the program, I considered whether and to what extent MPP is consistent with the Administration's broader strategy and policy objectives for creating a comprehensive regional framework to address the root causes of migration, managing migration throughout North and Central America, providing alternative protection solutions in the region, enhancing lawful pathways for migration to the United States, and—importantly—processing asylum seekers at the United States border in a safe and orderly manner consistent with the Nation's highest values.

As an initial matter, my review confirmed that MPP had mixed effectiveness in achieving several of its central goals and that the program experienced significant challenges.

- I have determined that MPP does not adequately or sustainably enhance border management in such a way as to justify the program's extensive operational burdens and other shortfalls. Over the course of the program, border encounters increased during certain periods and decreased during others. Moreover, in making my assessment, I share the belief that we can only manage migration in an effective, responsible, and durable manner if we approach the issue comprehensively, looking well beyond our own borders.

⁵ See "Joint DHS/EOIR Statement on MPP Rescheduling," Mar. 23, 2020, available at <https://www.dhs.gov/news/2020/03/23/joint-statement-mpp-rescheduling>.

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- Based on Department policy documents, DHS originally intended the program to more quickly adjudicate legitimate asylum claims and clear asylum backlogs. It is certainly true that some removal proceedings conducted pursuant to MPP were completed more expeditiously than is typical for non-detained cases, but this came with certain significant drawbacks that are cause for concern. The focus on speed was not always matched with sufficient efforts to ensure that conditions in Mexico enabled migrants to attend their immigration proceedings. In particular, the high percentage of cases completed through the entry of *in absentia* removal orders (approximately 44 percent, based on DHS data) raises questions for me about the design and operation of the program, whether the process provided enrollees an adequate opportunity to appear for proceedings to present their claims for relief, and whether conditions faced by some MPP enrollees in Mexico, including the lack of stable access to housing, income, and safety, resulted in the abandonment of potentially meritorious protection claims. I am also mindful of the fact that, rather than helping to clear asylum backlogs, over the course of the program backlogs increased before both the USCIS Asylum Offices and EOIR.
- MPP was also intended to reduce burdens on border security personnel and resources, but over time the program imposed additional responsibilities that detracted from the Department's critically important mission sets. The Department devoted resources and personnel to building, managing, staffing, and securing specialized immigration hearing facilities to support EOIR; facilitating the parole of individuals into and out of the United States multiple times in order to attend immigration court hearings; and providing transportation to and from ports of entry in certain locations related to such hearings. Additionally, as more than one-quarter of individuals enrolled in MPP were subsequently re-encountered attempting to enter the United States between ports of entry, substantial border security resources were still devoted to these encounters.

A number of the challenges faced by MPP have been compounded by the COVID-19 pandemic. As immigration courts designated to hear MPP cases were closed for public health reasons between March 2020 and April 2021, DHS spent millions of dollars each month to maintain facilities incapable of serving their intended purpose. Throughout this time, of course, tens of thousands of MPP enrollees were living with uncertainty in Mexico as court hearings were postponed indefinitely. As a result, any benefits the program may have offered are now far outweighed by the challenges, risks, and costs that it presents.

In deciding whether to maintain, modify, or terminate MPP, I have reflected on my own deeply held belief, which is shared throughout this Administration, that the United States is both a nation of laws and a nation of immigrants, committed to increasing access to justice and offering protection to people fleeing persecution and torture through an asylum system that reaches decisions in a fair and timely manner. To that end, the Department is currently considering ways to implement long-needed reforms to our asylum system that are designed to shorten the amount of time it takes for migrants, including those seeking asylum, to have their cases adjudicated, while still ensuring adequate procedural safeguards and increasing access to counsel. One such initiative that DHS recently announced together with the Department of Justice is the creation of a Dedicated Docket to

Subject: Termination of the Migrant Protection Protocols Program**Page 5**

process the cases of certain families arriving between ports of entry at the Southwest Border.⁶ This process, which will take place in ten cities that have well-established communities of legal service providers, will aim to complete removal proceedings within 300 days—a marked improvement over the current case completion rate for non-detained cases. To ensure that fairness is not compromised, noncitizens placed on the Dedicated Docket will receive access to legal orientation and other supports, including potential referrals for pro bono legal services. By enrolling individuals placed on the Dedicated Docket in Alternatives to Detention programs, this initiative is designed to promote compliance and increase appearances throughout proceedings. I believe these reforms will improve border management and reduce migration surges more effectively and more sustainably than MPP, while better ensuring procedural safeguards and enhancing migrants' access to counsel. We will closely monitor the outcomes of these reforms, and make adjustments, as needed, to ensure they deliver justice as intended: fairly and expeditiously.

In arriving at my decision to now terminate MPP, I also considered various alternatives, including maintaining the status quo or resuming new enrollments in the program. For the reasons articulated in this memorandum, however, preserving MPP in this manner would not be consistent with this Administration's vision and values and would be a poor use of the Department's resources. I also considered whether the program could be modified in some fashion, but I believe that addressing the deficiencies identified in my review would require a total redesign that would involve significant additional investments in personnel and resources. Perhaps more importantly, that approach would come at tremendous opportunity cost, detracting from the work taking place to advance the vision for migration management and humanitarian protection articulated in Executive Order 14010.

Moreover, I carefully considered and weighed the possible impacts of my decision to terminate MPP as well as steps that are underway to mitigate any potential negative consequences.

- In considering the impact such a decision could have on border management and border communities, among other potential stakeholders, I considered the Department's experience designing and operating a phased process, together with interagency and nongovernmental partners, to facilitate the safe and orderly entry into the United States of certain individuals who had been placed in MPP. Throughout this effort, the Department has innovated and achieved greater efficiencies that will enhance port processing operations in other contexts. The Department has also worked in close partnership with nongovernmental organizations and local officials in border communities to connect migrants with short-term supports that have facilitated their onward movement to final destinations away from the border. The Department's partnership with the Government of Mexico has been an integral part of the phased process's success. To maintain the integrity of this safe and orderly entry process for individuals enrolled in MPP and to encourage its use, the Department has communicated the terms of the process clearly to all stakeholders and has continued to use, on occasion and where appropriate, the return-to-contiguous-territory authority in INA Section 235(b)(2)(C) for MPP enrollees who nevertheless attempt to enter between ports of entry instead of through the government's process.

⁶ See U.S. Department of Homeland Security, "DHS and DOJ Announce Dedicated Docket Process for More Efficient Immigration Hearings," May 28, 2011, available at <https://www.dhs.gov/news/2011/05/28/dhs-and-doj-announce-dedicated-docket-process-more-efficient-immigration-hearings>.

Subject: Termination of the Migrant Protection Protocols Program**Page 6**

- In the absence of MPP, I have additionally considered other tools the Department may utilize to address future migration flows in a manner that is consistent with the Administration's values and goals. I have further considered the potential impact to DHS operations in the event that current entry restrictions imposed pursuant to the Centers for Disease Control and Prevention's Title 42 Order are no longer required as a public health measure. At the outset, the Administration has been—and will continue to be—unambiguous that the immigration laws of the United States will be enforced. The Department has at its disposal various options that can be tailored to the needs of individuals and circumstances, including detention, alternatives to detention, and case management programs that provide sophisticated wraparound stabilization services. Many of these detention alternatives have been shown to be successful in promoting compliance with immigration requirements. This Administration's broader strategy for managing border processing and adjudicating claims for immigration relief—which includes the Dedicated Docket and additional anticipated regulatory and policy changes—will further address multifaceted border dynamics by facilitating both timely and fair final determinations.
- I additionally considered the Administration's important bilateral relationship with the Government of Mexico, our neighbor to the south and a key foreign policy partner. Over the past two-and-a-half years, MPP played an outsized role in the Department's engagement with the Government of Mexico. Given the mixed results produced by the program, it is my belief that MPP cannot deliver adequate return for the significant attention that it draws away from other elements that necessarily must be more central to the bilateral relationship. During my tenure, for instance, a significant amount of DHS and U.S. diplomatic engagement with the Government of Mexico has focused on port processing programs and plans, including MPP. The Government of Mexico was a critically important partner in the first phase of our efforts to permit certain MPP participants to enter the United States in a safe and orderly fashion and will be an important partner in any future conversations regarding such efforts. But the Department is eager to expand the focus of the relationship with the Government of Mexico to address broader issues related to migration to and through Mexico. This would include collaboratively addressing the root causes of migration from Central America; improving regional migration management; enhancing protection and asylum systems throughout North and Central America; and expanding cooperative efforts to combat smuggling and trafficking networks, and more. Terminating MPP will, over time, help to broaden our engagement with the Government of Mexico, which we expect will improve collaborative efforts that produce more effective and sustainable results than what we achieved through MPP.

Given the analysis set forth in this memorandum, and having reviewed all relevant evidence and weighed the costs and benefits of either continuing MPP, modifying it in certain respects, or terminating it altogether, I have determined that, on balance, any benefits of maintaining or now modifying MPP are far outweighed by the benefits of terminating the program. Furthermore, termination is most consistent with the Administration's broader policy objectives and the Department's operational needs. Alternative options would not sufficiently address either consideration.

Therefore, in accordance with the strategy and direction in Executive Order 14010, following my review, and informed by the current phased strategy for the safe and orderly entry into the United States of certain individuals enrolled in MPP, I have concluded that, on balance, MPP is no longer a

Subject: Termination of the Migrant Protection Protocols Program

Page 7

necessary or viable tool for the Department. Because my decision is informed by my assessment that MPP is not the best strategy for implementing the goals and objectives of the Biden-Harris Administration, I have no intention to resume MPP in any manner similar to the program as outlined in the January 25, 2019 Memorandum and supplemental guidance.

Accordingly, for the reasons outlined above, I hereby rescind, effective immediately, the Memorandum issued by Secretary Nielsen dated January 25, 2019 entitled “Policy Guidance for Implementation of the Migrant Protection Protocols,” and the Memorandum issued by Acting Secretary Pecoske dated January 20, 2021 entitled “Suspension of Enrollment in the Migrant Protection Protocols Program.” I further direct DHS personnel, effective immediately, to take all appropriate actions to terminate MPP, including taking all steps necessary to rescind implementing guidance and other directives issued to carry out MPP. Furthermore, DHS personnel should continue to participate in the ongoing phased strategy for the safe and orderly entry into the United States of individuals enrolled in MPP.

The termination of MPP does not impact the status of individuals who were enrolled in MPP at any stage of their proceedings before EOIR or the phased entry process describe above.

* * * * *

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

CC: Kelli Ann Burriesci
Acting Under Secretary
Office of Strategy, Policy, and Plans

Exhibit M

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

ADJUDICATION STATISTICS

Credible Fear and Asylum Process: Fiscal Year (FY) 2008 – FY 2019

Out of 100 aliens who were to claim a credible fear...¹

CREDIBLE FEAR INTERVIEW

United States Citizenship and Immigration Services (USCIS) would refer **81 credible fear claimants to EOIR** (81% of claims referred to EOIR)²

REMOVAL PROCEEDINGS

EOIR would receive and complete **83 I-862 cases⁵** originating from credible fear claims

ASYLUM APPLICATION

45 credible fear claimants would file for asylum

(Of completed I-862 cases originating from a credible fear claim made to USCIS, 54 percent of aliens filed for asylum)

ASYLUM DECISION

IJs would grant asylum to **only 14 credible fear claimants and would not grant asylum to 31 credible fear claimants**

(Of completed I-862 cases originating from a credible fear claim made to USCIS, IJs grant asylum 17 percent of the time)

OPTION FOR EOIR TO REVIEW A NEGATIVE FEAR FINDING

7 cases are closed³

3 credible fear claimants would not request review by an immigration judge (IJ)

Alien Is Removed

9 credible fear claimants would request review by an IJ

CREDIBLE FEAR REVIEW (CFR)⁴

IJs would find credible fear for **2 credible fear claimants**

(IJs find credible fear in 22% of CFRs)

... only 14 out of 100 would be granted asylum.



EOIR Data Generated: October 23, 2019,

¹ Percentages used in assessing this population may change as more cases are completed over time and because some cases may be reopened.

² Based on USCIS data (generated October 15, 2019). Includes claims referred to EOIR in which USCIS did not make a credible fear finding because it could not obtain an interpreter.

³ Closed cases include those in which a claim is dissolved or

withdrawn or an alien is found to be ineligible for the credible fear process.

⁴ If USCIS finds that an alien has not established a credible fear, the alien may request review of that finding by an IJ. If the IJ finds that an alien has established a credible fear, then the alien (unless the alien is a stowaway) is placed in removal proceedings.

⁵ Includes completed removal, exclusion, and deportation case types.

Exhibit N

Joe Biden says fast immigration changes could cause '2 million people on our border'

By [Steven Nelson](#)

December 22, 2020 | 4:39pm | Updated



1 | 3



APD via Getty Images

MORE ON:
IMMIGRATION

President-elect Joe Biden on Tuesday said he would slowly reform US immigration policies to avoid

IMMIGRATION

Wuhan lab was batty and other commentary

Human smuggler busted with 12 immigrants after police chase

Biden's illegal-immigration welcome mat caused disaster at the border

VP Harris has another tense exchange as border visit pressure mounts

triggering a rush of "2 million people on our border."

Biden confirmed reports that **his team is nervous** amid an already increasing number of immigrants, including children and families, being detained at the border since his election victory last month.

"I've already started discussing these issues with the president of Mexico and our friends in Latin America and the timeline is to do it so that we in fact make it better, not worse," Biden said at a press conference in Wilmington, Del, when asked about the rollout of his new immigration policies.

"The last thing we need is to say we're going to stop immediately the, you know, the access to asylum the

way it's being run now and end up with 2 million people on our border."

Biden has promised to propose expansive amnesty legislation and to scrap President Trump's "remain in Mexico" policy, which requires most Central American migrants to stay in Mexico while the US reviews their asylum claims.

Biden said he won't immediately make good on his immigration promises because "it's a matter of setting up the guardrails."

"I will accomplish what I said I would do: A much more humane policy based on family unification. But it requires getting a lot in place. It requires getting the funding in place, including just asylum judges, for example," he said.

"It will get done and it will get done quickly. But it's not going to be able to be done on day one, lift every restriction that exists and go back to what it was 20 years ago and all of a sudden find we have a crisis on our hands that complicates what we're trying to do."

Biden said "it is going to take probably the next six months."

Immigration was a major topic during the campaign. Biden and Trump clashed during the final presidential debate on who was responsible for mistreating migrants.

“Who built the cages, Joe?” Trump infamously asked the former vice president.

Former President Barack Obama was derisively called the “deporter in chief” by left-wing immigration activists. Trump, who campaigned against illegal immigration and built a large new border wall, lagged behind Obama in annual deportation figures.

Biden **said last month** he will propose a bill in his first 100 days in office that offers a pathway to citizenship “for over 11 million undocumented people,” or the approximate total number of illegal immigrants in the US, creating a possible scramble to the border.

— ADVERTISEMENT —



Under Obama, border officials struggled in 2014 with a surge in unaccompanied minors. Some were drawn by hoped-for future expansion of the 2012 Deferred Action for Childhood Arrivals program, which offers work permits and protection from deportation for people brought illegally to the US as children.

Exhibit O

At the border, a widely predicted crisis that caught Biden off guard



Migrants cross the Rio Grande Valley on March 28 in Roma, Tex. (Michael Robinson Chavez/The Washington Post)

By Nick Miroff

April 26, 2021 at 12:04 p.m. MST

41

While there is high support for President Biden's handling of the [coronavirus](#) pandemic and the new president has enjoyed higher approval ratings than his predecessor, there are widespread worries about his management of the U.S. southern border, which has been his [worst polling issue](#).

As experts had warned for months, a massive influx of migrants has arrived at the border in recent weeks, including a record number of teenagers and children traveling without their parents who need to be sheltered for weeks. Last month, [172,331 migrants](#) were taken into custody by U.S. Customs and Border Protection, the highest total in nearly 20 years.

Biden's [GOP opponents](#) have blamed him for the influx and criticized his response, and Republican strategists say immigration will be a galvanizing issue for the 2022 midterm elections. Some of the party divisions that emerged after President Donald Trump's reelection defeat and the storming of the U.S. Capitol appear to have been patched over, in part by shared conservative outrage at Biden's border policies.

[\[Trump put up walls to immigrants, with stinging rhetoric and barriers made of steel and regulation\]](#)

Administration officials say they are trying to build more humane and orderly border policies, and they did not realize the extent to which the Trump administration had "dismantled" the U.S. asylum system. They now find themselves in the position of trying to

A vertical yellow advertisement for ASU W.P. Carey School of Business. At the top, it features two 'BEST GRAD SCHOOLS' awards from US News & World Report. Below the awards, the text reads 'Your career is waiting. Your MBA doesn't have to.' At the bottom, there is a purple button that says 'Learn more' and the ASU W.P. Carey School of Business logo.

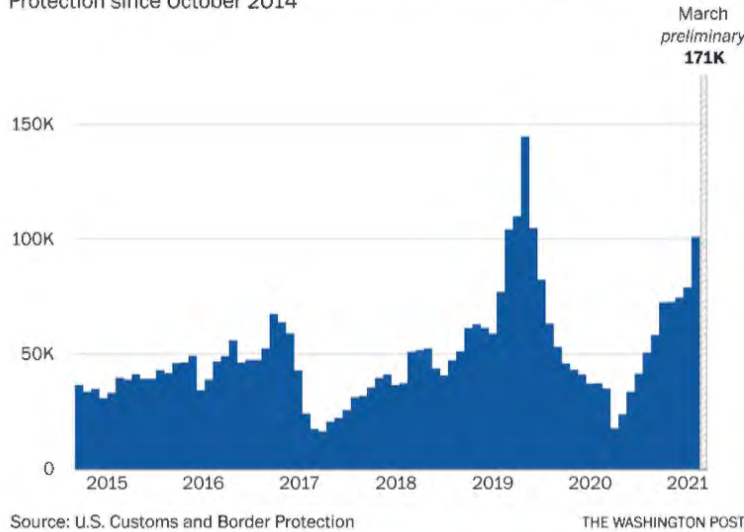
MOST READ NATIONAL



overhaul U.S. immigration policy in the middle of a major border influx and a global pandemic. Many liberal Democrats and activists are quick to denounce new deterrent measures as a betrayal, limiting Biden’s ability to quickly change course.

Southern border encounters

Apprehensions and inadmissibles detained by Customs and Border Protection since October 2014



Transition

In the weeks before Biden took office, he and his administration were aware of the risks they could face at the Mexico border. Trump and his top officials were predicting “disaster” if the Biden team followed through on campaign promises to roll back control measures.



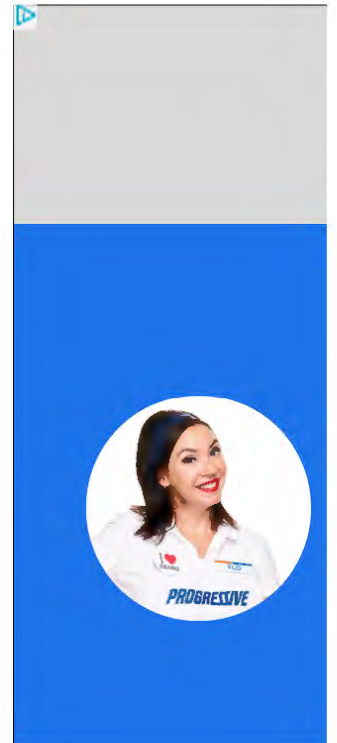
Biden seemed eager to temper expectations when he laid out his immigration policy plans a month before inauguration. His administration wanted to ensure “guardrails” were in place, he said, to avoid having “2 million people on our border.”

“It’s not going to be able to be done on Day 1, lift every restriction that exists,” he said, “and find out that and go back to what it was 20 years ago and all of a sudden find out we have a crisis on our hands that complicates what we’re trying to do.”

[Biden says he’ll reverse Trump immigration policies but wants ‘guardrails’ first]

Biden’s incoming national security adviser, Jake Sullivan, and top domestic policy official.

- 1 A humpback whale swallowed a diver whole and spit him out alive — eat me’
- 2 Woman killed when driver plows into crowd protesting U.S. Marshals’ task force shooting of Black man
- 3 2020 was the deadliest gun violence year in decades. So far, 2021 is worse.
- 4 Videos show Ocean City, Md., police using force on teens while enforcing boardwalk vaping ban
- 5 ‘People of Praise leaders failed me’: Christian group tied to Justice Amy Coney Barrett faces reckoning over sexual misconduct



Susan Rice, sounded a similar note in an [interview](#) with a Spanish-language news service, with Rice saying “migrants and asylum seekers absolutely should not believe those in the region peddling the idea that the border will suddenly be fully open.”

When Trump faced a record influx of Central American families arriving at the border in 2019, he implemented controversial measures limiting access to the U.S. asylum system, while pressuring Mexico to carry out an enforcement crackdown. Then the pandemic hit, and Trump used a CDC health order to give U.S. agents the authority to rapidly return the vast majority of border crossers to Mexico.

Pressures on the border continued building through 2020 anyway. A [pair of hurricanes](#) devastated Honduras and Guatemala, compounding the economic pain of the pandemic. The number of illegal crossings rose through the final months of the year, as did the number of teens and children arriving without parents.

As Biden prepared to take office, he had an [ambitious legislative agenda](#) that included a new push for comprehensive immigration restructuring. But it was clear he would have to balance his promises to reverse Trump policies against the risks his administration would face from removing some control measures too quickly.



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A woman and son from Honduras arrive on the U.S. side of the Rio Grande Valley in Mission, Tex. (Michael Robinson Chavez/The Washington Post)

January

The prudent tone Biden’s team sounded in December was harder to detect on Inauguration Day, as the guardrails started coming off. Biden issued [more executive orders and actions on immigration](#) than any other topic, including a 100-day deportation moratorium and a halt to border wall construction.



Content from Bibigo

Why Korean food philosophy is just what 2021 needs

K-food is wildly popular. The values behind its cuisine should be, too.

“The task of enforcing the immigration laws is complex and requires setting priorities to best serve the national interest,” one of Biden’s Jan. 20 orders [declared](#), signaling a break with Trump. “My Administration will reset the policies and practices for enforcing civil immigration laws to align enforcement with these values and priorities.”

[Biden to propose overhaul of immigration laws on first day in office]

The Biden administration ended the “[Remain in Mexico](#)” program, which required asylum-seeking families to wait outside U.S. territory for their claims to be processed, and said it would not use Trump’s pandemic health order to return unaccompanied minors to their home countries, allowing them to remain in the United States with relatives or vetted sponsors while seeking protection.

Biden officials said they would continue to use the order, known as Title 42, to expel families and single adults. But a week into Biden’s term, Mexican authorities said they would no longer accept the return of some families, especially in the [Rio Grande Valley](#), the busiest area for unlawful crossings.

Word soon spread that families with children younger than 7 years old were being allowed to enter the United States and released from custody. Families fitting that profile began rushing to that span of the border, where U.S. agents were already overwhelmed by soaring numbers of teens and children arriving alone.



- 1 ‘You can’t get rid of the smell because in the walls’
- 2 Marjorie Taylor Greene led early in the House’s crazy stakes. But a dark horse has emerged.
- 3 Coronavirus infections dropping where people are vaccinated, rising where they are not, Post analysis finds
- 4 He opted to skip graduation and work a shift at Waffle House. His boss was not having it: ‘I was going to get him there no matter what’
- 5 A humpback whale swallowed a lobster diver whole and spit him out alive: ‘It tried to eat me’






Minors are housed at the Department of Homeland Security holding facility in Donna, Tex. (Dario Lopez-Mills/Pool/AP)

February

Even as border stations and holding cells began to fill with new crossers, the Biden administration continued to repeal Trump-era enforcement measures. On Feb. 6, Secretary of State Antony Blinken announced via [tweet](#) that the Biden administration had canceled Trump-era agreements with the governments of Central America to limit access to the U.S. asylum system, and the move was widely covered in the region as the removal of another barrier.



Content from Atlassian 

How collaboration can thrive in the era of hybrid work

Whiteboarding and chats around the water cooler are so 2019. Here's why smart companies are using software to bring teams together.

By mid-February, families that had been left waiting in crude camps along the Rio Grande by the “Remain in Mexico” policy were allowed to begin entering the United States, in emotional and dramatic scenes that further underscored Biden’s new approach.

[Asylum seekers stuck in Mexico are frustrated, angry over Biden administration’s release of some migrants into U.S.]

The number of minors arriving without their parents continued to balloon, and with the capacity of the Department of Health and Human Services’ shelter network reduced by the pandemic, teens and children began backing up inside CBP tents, sleeping shoulder-to-shoulder on floor mats. They were stranded beyond the 72-hour legal limit while waiting for beds to open up in DHS shelters.

deas to open up in their shelters.

More migrant families were arriving, too, and with Mexico only taking back a limited number, the Biden administration released more and more parents with children into border towns and cities. Biden officials continued to insist they were expelling the majority of the families crossing the border. It wasn't true; [statistics](#) show fewer than half were being sent back.



Migrants, mostly from Central America, at a Mexican immigration office on March 30 in Ciudad Juárez, Mexico. (Michael Robinson Chavez/The Washington Post)

March

With criticism from Republicans and some Democrats growing, Biden officials rejected the characterization of the influx as a “crisis,” insisting it was a challenge brought by seasonal migration trends that were consistent with historical patterns.



Homeland Security Secretary Alejandro Mayorkas said the administration's message to asylum seekers was to stay home until the United States could restore full protections. “We are not saying, ‘Don't come,’” he told reporters [at the White House on March 1](#). “We are

saying, ‘Don’t come now because we will be able to deliver a safe and orderly process to them as quickly as possible.’ ”

The message didn’t work, and border crossings skyrocketed through the first several weeks of March as a record number of unaccompanied minors were taken into custody. Migrants arriving as part of a family groups jumped to 53,623 in March, a sevenfold increase from January. So many single adults were crossing and attempting to evade capture that border agents said they were struggling to respond as they recorded nearly 1,000 “got-away” incidents each day.

The arrival of so many teens and children sent HHS officials scrambling to open emergency shelters, and Mayorkas mobilized the Federal Emergency Management Agency to help. Soon, the temporary shelter network would include convention centers as well as military sites and worker camps in the Texas oil fields as the Biden administration rushed to open bed space across a dozen sites.



At a March 25 news conference, Biden falsely described the increase as a seasonal norm, not a result of his policies or approach. “The truth of the matter is: Nothing has changed,” Biden said. “It happens every single, solitary year.”

“I like to think it’s because I’m a nice guy, but it’s not,” he [said](#).

[\[‘No end in sight’: Inside the Biden administration’s failure to respond to an influx at the border\]](#)

As Biden officials pledged to reduce border pressures by addressing the “root causes” of migration from Central America, they worked behind the scenes to get Mexico to stiffen enforcement. Mexican President Andrés Manuel López Obrador agreed to deploy more police and soldiers near the country’s border with Guatemala, and the United States pledged to ship him millions of doses of surplus coronavirus vaccines.





Migrants from Honduras are directed by a Hidalgo County constable in Mission, Tex. (Michael Robinson Chavez/The Washington Post)

April

Mexico's crackdown appears to be having some effect so far in April, as the number of minors and family members arriving to U.S. custody has slightly dipped, even as the number of single adults has increased. U.S. officials had been bracing for migration levels to continue their steep ascent, but [preliminary statistics](#) suggest the trend has plateaued.



Content from Capital Group ⓘ

An agreed framework can make for smoother wealth transfers

Financial professionals can help families define the process and align on key issues involving generational wealth

April nonetheless remains on course to be one of the busiest months along the border in the last two decades. Many Republican lawmakers insist they will not consider any immigration-related legislation until the numbers dramatically fall, further limiting the president's already narrow path.

The Biden administration now has more than 21,000 teens and children in HHS shelters — a record — plus another 1,700 in Border Patrol stations and facilities. Although the administration is quickly growing its number of shelter beds, it lacks enough child-care providers to supervise them and case workers to screen their family members to determine their eligibility to take custody. The administration is seeking [volunteers from across the government](#), including agencies like NASA, the Environmental Protection Agency and the Federal Trade Commission, who are willing to go to the border and help care for the minors for several months.

[Unaccompanied migrant children spend weeks in government custody, even when their U.S.-based parents are eager to claim them]

In mid-April, Biden opted to not admit more refugees, triggering a backlash among Democrats that forced the White House to [reverse course](#). The president then, for the first time, called the migration surge a “crisis.”

“The problem was that the refugee part was working on the crisis that ended up on the border with young people, and we couldn't do two things at once,” he said.

Two days later, White House officials [told CNN](#) that Biden’s statement did not reflect his administration’s official position.

Updated June 14, 2021

President Joe Biden: What you need to know

The latest

[Amid strained U.S.-Turkey relations, Biden and Erdogan to meet on sidelines of NATO summit](#)

[Disagreements flare among NATO allies despite relief at Biden’s arrival](#)

[Biden will give Putin a list of demands. The Russian president may ignore them.](#)

The administration

The Biden Cabinet: [Who has been selected](#)

Biden appointees: [Who is filling key roles](#)

The Biden Agenda

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🗨️ 41 Comments



By [Nick Miroff](#)

Nick Miroff covers immigration enforcement and the Department of Homeland Security for The Washington Post. He was a Post foreign correspondent in Latin America from 2010 to 2017, and has been a staff writer since 2006. [Twitter](#)

Exhibit P



U.S. Department of
Homeland Security

DHS Announces Rescission of Civil Penalties for Failure-to-Depart

Release Date: April 23, 2021

WASHINGTON – Today, at the direction of Secretary of Homeland Security Alejandro N. Mayorkas, U.S. Immigration and Customs Enforcement (ICE) rescinded two delegation orders related to the collection of civil financial penalties for noncitizens who fail to depart the U.S., stating they run counter to the agency’s best interest.

“There is no indication that these penalties promoted compliance with noncitizens’ departure obligations,” said Secretary Mayorkas. “We can enforce our immigration laws without resorting to ineffective and unnecessary punitive measures.”

After reviewing detailed data regarding the issuance of such fines since 2018, it was clear to Secretary Mayorkas and Acting ICE Director Tae Johnson that the fines were not effective and had not meaningfully advanced the interests of the agency. ICE intends to work with the Department of Treasury to cancel the existing debts of those who had been fined.

The two delegation orders—ICE Delegation No. 01-2018, *Delegation of Authority to Administer and Enforce Provisions Relating to Civil Penalties for Failure to Depart*, and ICE Delegation No. 006-2020, *Delegation of Authority to Administer Certain Provisions Relating to Civil Penalties for Failure to Depart*—delegated to certain ICE officials the authority to administer and enforce certain civil penalties for noncitizens who fail to depart.

Although ICE has had the authority to assess financial penalties to individuals for failing to depart for more than 20 years, the agency did not initiate enforcement of these penalties until 2018. As of January 20, 2021, ICE ceased issuing these fines. This formalizes the Biden Administration’s change in direction.

The rescission marks ICE’s latest move toward focusing its limited resources on those posing the greatest risk to national security and public safety in accordance with the current

guidance on civil immigration enforcement and removal priorities, which Acting Director Johnson issued on Feb. 18, 2021.

Topics: [Immigration and Customs Enforcement \(/topics/immigration-enforcement\)](#), [Secretary of Homeland Security \(/topics/secretary-homeland-security\)](#).

Keywords: [Civil Penalty \(/keywords/civil-penalty\)](#), [Immigration \(/keywords/immigration\)](#), [Immigration and Customs Enforcement \(ICE\) \(/keywords/ice\)](#), [Immigration Enforcement \(/keywords/immigration-enforcement\)](#), [Secretary Alejandro Mayorkas \(/keywords/secretary-alejandro-mayorkas\)](#).

Last Published Date: April 23, 2021

Exhibit Q

Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**


January 20, 2021

MEMORANDUM FOR: Troy Miller
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection

Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Tracey Renaud
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services

CC: Karen Olick
Chief of Staff

FROM: David Pekoske 
Acting Secretary

SUBJECT: **Review of and Interim Revision to Civil Immigration
Enforcement and Removal Policies and Priorities**

This memorandum directs Department of Homeland Security components to conduct a review of policies and practices concerning immigration enforcement. It also sets interim policies during the course of that review, including a 100-day pause on certain removals to enable focusing the Department's resources where they are most needed. The United States faces significant operational challenges at the southwest border as it is confronting the most serious global public health crisis in a century. In light of those unique circumstances, the Department must surge resources to the border in order to ensure safe, legal and orderly processing, to rebuild fair and effective asylum procedures that respect human rights and due process, to adopt appropriate public health guidelines and protocols, and to prioritize responding to threats to national security, public safety, and border security.

This memorandum should be considered Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS).

A. Comprehensive Review of Enforcement Policies and Priorities

The Chief of Staff shall coordinate a Department-wide review of policies and practices concerning immigration enforcement. Pursuant to the review, each component shall develop recommendations to address aspects of immigration enforcement, including policies for prioritizing the use of enforcement personnel, detention space, and removal assets; policies governing the exercise of prosecutorial discretion; policies governing detention; and policies regarding interaction with state and local law enforcement. These recommendations shall ensure that the Department carries out our duties to enforce the law and serve the Department's mission in line with our values. The Chief of Staff shall provide recommendations for the issuance of revised policies at any point during this review and no later than 100 days from the date of this memo.

The memoranda in the attached appendix are hereby rescinded and superseded.

B. Interim Civil Enforcement Guidelines

Due to limited resources, DHS cannot respond to all immigration violations or remove all persons unlawfully in the United States. Rather, DHS must implement civil immigration enforcement based on sensible priorities and changing circumstances. DHS's civil immigration enforcement priorities are protecting national security, border security, and public safety. The review directed in section A will enable the development, issuance, and implementation of detailed revised enforcement priorities. In the interim and pending completion of that review, the Department's priorities shall be:

1. **National security.** Individuals who have engaged in or are suspected of terrorism or espionage, or whose apprehension, arrest and/or custody is otherwise necessary to protect the national security of the United States.
2. **Border security.** Individuals apprehended at the border or ports of entry while attempting to unlawfully enter the United States on or after November 1, 2020, or who were not physically present in the United States before November 1, 2020.
3. **Public safety.** Individuals incarcerated within federal, state, and local prisons and jails released on or after the issuance of this memorandum who have been convicted of an "aggravated felony," as that term is defined in section 101(a) (43) of the Immigration and Nationality Act at the time of conviction, and are determined to pose a threat to public safety.

These priorities shall apply not only to the decision to issue, serve, file, or cancel a Notice to Appear, but also to a broad range of other discretionary enforcement decisions, including deciding: whom to stop, question, and arrest; whom to detain or release; whether to settle, dismiss, appeal, or join in a motion on a case; and whether to grant deferred action or parole. In

addition, all enforcement and detention decisions shall be guided by DHS's ability to conduct operations and maintain custody consistent with applicable COVID-19 protocols.

While resources should be allocated to the priorities enumerated above, nothing in this memorandum prohibits the apprehension or detention of individuals unlawfully in the United States who are not identified as priorities herein. In order to ensure appropriate allocation of resources and exercise of prosecutorial discretion, the Acting Director of ICE shall issue operational guidance on the implementation of these priorities. This guidance shall contain a protocol for the Acting Secretary to conduct a periodic review of enforcement actions to ensure consistency with the priorities set forth in this memorandum. This guidance shall also include a process for the Director of ICE to review and approve of any civil immigration enforcement actions against individuals outside of federal, state or local prisons or jails.

These interim enforcement priorities shall go into effect on February 1, 2021 and remain in effect until superseded by revised priorities developed in connection with the review directed in section A.

C. Immediate 100-Day Pause on Removals

In light of the unique circumstances described above, DHS's limited resources must be prioritized to: (1) provide sufficient staff and resources to enhance border security and conduct immigration and asylum processing at the southwest border fairly and efficiently; and (2) comply with COVID-19 protocols to protect the health and safety of DHS personnel and those members of the public with whom DHS personnel interact. In addition, we must ensure that our removal resources are directed to the Department's highest enforcement priorities. Accordingly, and pending the completion of the review set forth in section A, I am directing an immediate pause on removals of any noncitizen¹ with a final order of removal (except as noted below) for 100 days to go into effect as soon as practical and no later than January 22, 2021.

The pause on removals applies to any noncitizen present in the United States when this directive takes effect with a final order of removal except one who:

1. According to a written finding by the Director of ICE, has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to the national security of the United States; or
2. Was not physically present in the United States before November 1, 2020; or
3. Has voluntarily agreed to waive any rights to remain in the United States, provided that he or she has been made fully aware of the consequences of waiver

¹ "Noncitizen" as used in this memorandum does not include noncitizen nationals of the United States.

and has been given a meaningful opportunity to access counsel prior to signing the waiver;² or

4. For whom the Acting Director of ICE, following consultation with the General Counsel, makes an individualized determination that removal is required by law.

No later than February 1, 2021, the Acting Director of ICE shall issue written instructions with additional operational guidance on the further implementation of this removal pause. The guidance shall include a process for individualized review and consideration of the appropriate disposition for individuals who have been ordered removed for 90 days or more, to the extent necessary to implement this pause. The process shall provide for assessments of alternatives to removal including, but not limited to, staying or reopening cases, alternative forms of detention, custodial detention, whether to grant temporary deferred action, or other appropriate action.

D. No Private Right Statement

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

² A voluntary waiver encompasses noncitizens who stipulate to removal as part of a criminal disposition.

APPENDIX

Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest*, Memorandum of February 20, 2017.

U.S. Immigration and Customs Enforcement, *Implementing the President's Border Security and Interior Immigration Enforcement Policies*, Memorandum of February 20, 2017.

U.S. Immigration and Customs Enforcement, *Guidance to OPLA Attorneys Regarding the Implementation of the President's Executive Orders and the Secretary's Directives on Immigration Enforcement*, Memorandum of August 15, 2017.

US Citizenship and Immigration Services, *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, Policy Memorandum of June 28, 2018. (US Citizenship and Immigration Services should revert to the preexisting guidance in Policy Memorandum 602-0050, US Citizenship and Immigration Services, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*, Policy Memorandum of Nov. 7, 2011.)

US Citizenship and Immigration Services, *Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) When Processing a Case Involving Information Submitted by a Deferred Action for Childhood Arrivals (DACA) Requestor in Connection with a DACA Request or a DACA-Related Benefit Request (Past or Pending) or Pursuing Termination of DACA*, Policy Memorandum of June 28, 2018.

U.S. Customs and Border Protection, *Executive Orders 13767 and 13768 and the Secretary's Implementation Directions of February 17, 2017*, Memorandum of February 21, 2017.