

IMMIGRATION REPORT



The Biden Administration Determined to End Title 42 – Last Barrier to Complete Border Chaos

On April 1, the Biden administration announced that it would cancel Title 42 as of May 23. It was not an April Fools’ joke. The administration plans to abandon this public health provision that was invoked in March 2020 at the onset of the COVID pandemic. Under Title 42, Customs and Border Protection (CBP) has been empowered to quickly remove illegal migrants who are apprehended at the border. As recently as February, 55 percent of the nearly 165,000 illegal aliens CBP encountered at the border were turned back under this provision.

The open-borders Biden administration seized on an assessment by the Centers for Disease Control (CDC) that COVID now poses less of a public health threat than it did just a few months ago as a pretense for canceling Title 42. Having taken a wrecking ball to just about every other border and immigration enforcement mechanism during its first 14 months in office, Title 42 is the last remaining policy under which significant numbers of illegal migrants have been prevented from entering the country.

Worse yet, the administration is fully aware of the consequences of ending Title 42 with no other policies in place to deter illegal immigration. Intelligence officials within the Department of Homeland Security (DHS) have cautioned the White House that as many as a million migrants would stream across the border in just the first six weeks after Title 42 is removed. Such numbers would eclipse even last summer’s surge of about 214,000 illegal aliens in a single month.

People working directly for President Biden, including his chief of staff, Ron Klain, and his domestic policy advisor, Susan Rice, have sounded alarm bells. According to The New York Times, “Ms. Rice, Mr. Klain and others were worried that lifting the restriction would invite even more migrants to the southwest border and could be seen as premature if another variant emerged.” Democratic members of Congress, especially those from border states like Arizona and Texas, publicly implored the president not to cancel Title 42 without having any effective policies in place to prevent the border chaos that DHS acknowledges will ensue.

End to Title 42

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However, instead of maintaining Title 42, or restoring other effective border enforcement policies that were canceled during the president's first few weeks in office, in an effort to prevent a border crisis of unprecedented magnitude, the administration's efforts are focused solely on managing the chaos they know is coming. At the direction of DHS Secretary Alejandro Mayorkas, the architect of the administration's disastrous immigration policies, the agency has assembled a multi-departmental task force charged with processing migrants as quickly as possible and transporting them to their desired destination in the interior of the United States where they are to be released.

To this end, the task force is pulling border agents off the front lines, preparing giant tent cities to temporarily house migrants after they cross the border, requisitioning buses and aircraft from the Federal Bureau of Prisons and the military, redeploying doctors and nurses from veterans' hospitals around the country, and other measures to cope with the even more

massive influx of migrants. Strikingly, President Biden is taking no overt steps to prevent an even bigger crisis at the border (on top of the myriad of other domestic and foreign crises his administration is dealing with), despite explicit warnings by some of his own advisors and members of his own party.

With the clock ticking down to May 23, FAIR is working with lawmakers on Capitol Hill to derail this dangerous move by the Biden administration in the absence of other policy mechanisms to prevent the largest influx of illegal migrants in the nation's history, and rallying public opposition. Additionally, Arizona, Louisiana and Missouri (there are now 21 states) have filed a lawsuit seeking to enjoin the administration from canceling Title 42. According to the lawsuit, Title 42 is "the only safety valve preventing this Administration's disastrous border policies from devolving into an unmitigated chaos and catastrophe," that would cause significant and irreparable harm to states and local communities. FAIR, and our public interest law affiliate, the Immigration Reform Law Institute, are fully supportive of this legal challenge to the president's move.

Administration Issues New Rule to Rubberstamp Frivolous Asylum Claims

Filing frivolous, or even patently fraudulent, political asylum is driving a resurgent wave of illegal immigration. In the past, attempting to enter the United States illegally did their best to elude Customs and Border Protection (CBP) agents as they crossed the border. Now, many are willingly surrendering to CBP as soon as they set foot on U.S. soil, or even seek out



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officers if they are not around when they enter.

To combat massive asylum fraud, the Trump administration established policies and agreements to deter people from abusing the asylum system. Among the notable steps taken by the previous administration were the Migrant Protection Protocols (MPP), also known as Remain in Mexico, and an agreement with Central American governments that required migrants to request asylum in the first safe country they arrived in after leaving their homelands. These and others were

States – will now be handled by asylum officers who work for U.S. Citizenship and Immigration Services (USCIS). USCIS is part of DHS, which is run by Alejandro Mayorkas who, during the Obama administration pressured agency personnel to ignore evidence of fraud when determining petitions for immigration benefits.

“Today, the Department of Homeland Security (DHS) and Department of Justice (DOJ) are issuing a rule to improve and expedite processing of asylum claims made by noncitizens subject to expedited removal, ensuring that

The rule – like nearly every Biden administration policy change – does nothing to discourage illegal immigration, nor does it eliminate any incentive to make a fraudulent credible fear claim. Rather, the rule will simplify and weaken the credible fear review process and will result in a higher rate of aliens without adequate claims being granted asylum or receiving protection from removal. This will encourage more illegal immigration and fraudulent asylum claims, which is the Biden administration’s end goal.

Most of these fraudulent asylum



immediately canceled by the Biden administration.

But doing away with policies that effectively deterred a lot of asylum fraud was not enough for the Biden administration. Under a new rule issued by the Departments of Homeland Security (DHS) and Justice (DOJ), asylum claimants will no longer have to go before an immigration judge to determine if the claim being pursued has any merit. This initial step – which gets asylum claimants into the United

those who are eligible for asylum are granted relief quickly, and those who are not are promptly removed,” Mayorkas and Attorney General Merrick Garland said in a statement on March 24.

In reality, these changes are a thinly-veiled attempt to normalize the high number of illegal aliens surging across our southern border and mask the increased surge that the Biden administration anticipates will occur in response to the ending of Title 42.

claimants will never appear before an immigration judge because the real objective of the claim is just to make their way into the United State and disappear. Mayorkas and Garland are, of course, well aware that the vast majority of those being waived into the country are not valid asylum seekers, but see the new rule as a way to streamline the entry of illegal aliens and move them away from the border as expeditiously as possible.

For California Lawmaker, Turning Illegal Aliens into Cops is the Next Frontier

If a California state senator has her way, illegal aliens will soon be able to serve as police officers in the Golden State. For Sen. Nancy Skinner, allowing illegal aliens to serve as law enforcement officers is the next frontier in normalizing the status of illegal aliens. (We would say the Final Frontier, but that would be underestimating the creativity of California lawmakers when it comes to showering benefits and rewards on illegal aliens.)

Under SB 90, Skinner is explicit in who she intends the legislation to benefit. “Existing law establishes the Commission on Peace Officer Standards and Training within the Department of Justice to perform various functions involving the training of peace officers. Existing law requires peace officers in this state to meet specified minimum standards, including, among other requirements, being at least 18 years of age, being of good moral character, as determined by a thorough background investigation, and being either a citizen of the United States or a permanent resident who is eligible for and has applied for citizenship, except as prescribed,” states the language of the bill. “This bill would remove the provision that requires peace officers to either be a citizen of the United States or be a permanent resident who is eligible for and has applied for citizenship,” it continues.

Sen. Skinner represents Berkeley and other communities in the East Bay. The irony of Sen. Skinner’s bill is likely lost on the “progressive” leadership of that city who were among the first to adopt the “defund the police” ethos in deed, not just words. In the aftermath of the killing of George Floyd, the Berkeley City Council stripped \$9.2 million from the city’s police department budget – a reduction of about 12 percent. To the amazement of no one, Berkeley registered an immediate increase in all types of crime.

But even as “progressives” in Berkeley and other cities in California have moved to defund police departments SB 90 would encourage the hiring of new law enforcement officers whose very presence in the state is a violation of federal law. Like many schemes to reward and encourage illegal immigration that originate in California, SB 90 may not succeed on its first try. But history tells us that they will keep trying until they succeed – or until voters in that state finally put an end to it.





Title 42 Is Essential to Protecting Public Health

Irresponsible members of Congress and the administration who have been pressing President Biden to cancel Title 42 argued that the provision was never meant to serve as an immigration enforcement mechanism and that once the Centers for Disease Control (CDC) declared that COVID no longer posed a significant public health threat, it should be canceled.

Whether COVID still poses a public health threat is debatable. Even after announcing that Title 42 is to be canceled, the administration has kept in place many COVID-related restrictions on the American public, and even extended a moratorium on repayment of student loans through August 31 because of the ongoing effects of the COVID pandemic.

But even with a welcome reduction in hospitalization and deaths due to COVID, the pandemic is far from over. At the exact moment that the White House announced its intention to cancel Title 42, 28.5 million residents of Shanghai, China, were under a heavy-handed lockdown imposed by the Chinese Communist Party to prevent the further spread of a new strain of COVID in that city. Those with memories that extend back more than two years will recall that the original strain of COVID first emerged in Wuhan, China, in December 2019. Despite an equally onerous lockdown, the virus spread quickly around the world. By January 2020, the first case was reported in the United States and by March we were in the clutches of a full-blown health emergency.

Anyone, including policymakers in the Biden administration, who asserts that an unprecedented number of migrants pouring across the border, traveling in large groups and coming from countries where vaccination rates are low and infection rates are high does not pose a significant threat to public health in the United States, is deliberately endangering the well-being of the American people.

The public health threat posed by chaos at the border once Title 42 is lifted is not limited to new outbreaks of COVID. Other dangerous and communicable diseases are certain to enter the country, concealed in the bodies of migrants who cannot be adequately screened. Additionally, an even more chaotic border is an open invitation to criminal cartels that smuggle dangerous narcotics across the border. The CDC has declared that opioid addiction, particularly fentanyl, now constitutes a public health emergency having claimed the lives of more than 100,000 Americans last year. In President Biden's first year in office, Customs and Border Patrol reported a 1,066 percent increase in fentanyl seizures in Texas alone.

If COVID does not currently pose a public health crisis right now, it very likely will once Title 42 is gone. If fentanyl is already a public health crisis, according to the CDC, it will be an even bigger one as the criminal cartels take advantage of even greater chaos at our borders.

Victory: Federal Court Blocks DHS' "No-Enforcement" Policies

A series of guidelines issued by Homeland Security Secretary Alejandro Mayorkas last fall, put virtually all illegal aliens off-limits to arrest, detention and removal from the United States. These guidelines went beyond de facto policies that were already in place under the Biden administration that resulted in historically low numbers of immigration arrests and removals in FY 2021.

In response to Mayorkas' formal guidelines, issued in September and October, Arizona, Montana and Ohio filed a lawsuit. The suit contends that the policies exceed any reasonable discretionary authority in carrying out immigration laws, and that the administration's blatant refusal to enforce laws is inflicting fiscal damage on the

enforcement policies and that they established adequate legal standing to file the suit. "The states have shown that their criminal justice expenditures increase when DHS's detention and removal of noncitizens decrease," Newman wrote.

FAIR's legal affiliate, the Immigration Reform Law Institute (IRLI), filed a friend of the court brief supporting the states' legal challenge. In its brief, IRLI pointed out that Congress makes the laws, and the executive is supposed to carry them out—not make its own laws opposed to those of Congress.

While the court's injunction is an important victory for the rule of law, the Biden administration has



states. In late March, Federal District Judge Michael Newman sided with the states and issued an injunction barring Mayorkas' guidelines from being implemented.

Sec. Mayorkas has boasted that under his watch, mere illegal presence in the United States would not be grounds for arrest and removal, even though federal law explicitly states that it is. Mayorkas' guidelines even exempt many criminal aliens from removal. Judge Newman called Mayorkas' position an "end-run around" the law. The judge also agreed with the states' contention that they are being damaged by DHS's non-

demonstrated its contempt for judicial rulings ordering them to enforce laws that prevent or deter mass illegal immigration. A decision, upheld by the U.S. Supreme Court, ordering the administration to reinstate the Migrant Protection Protocols, which require asylum seekers to remain in Mexico pending an initial hearing on their claims, has been largely ignored, with only an average of seven illegal migrants being returned to Mexico each day.

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