

CENTER FOR HOMELAND SECURITY & IMMIGRATION

USING EXECUTIVE ACTION TO SECURE THE BORDER

The border and immigration crisis Americans are experiencing is avoidable. Through a series of policies and programs, refined over the course of four years, the Trump Administration helped make the United States' southern border the most secure it has been in decades.

Unfortunately, that progress was reversed when President Biden came into office. Instead of putting the interests and security of the American people first, the Biden Administration has prioritized political empowerment, kowtowing to the fringe radical left and eliminating effective policies. The results, as we have all seen, have been catastrophic, and will continue to endanger Americans.

While Congress should enact security-focused immigration reform, the Biden Administration does not need legislation to fix things now, and already has numerous authorities at its disposal to positively, and immediately, address the current crisis.

Here are 12 concrete steps to get this crisis under control right now:

- 01 / BUILD BORDER WALL INFRASTRUCTURE.** We should listen to Border Patrol operators on the border, not politicians in D.C. During the Trump Administration, the Border Patrol identified the type of material and locations to build a new border wall system. Biden has put politics over the advice of Border Patrol agents, and despite never having visited the border, stopped the construction of effective barriers that would provide much-needed impedance and denial of would-be illegal crossers to CBP. Today, President Biden is paying millions of dollars a day to contractors to do nothing, rather than continue with construction. Putting the contractors back to work and completing the border wall in previously identified locations is something that could be done tomorrow at no additional cost.
- 02 / REINSTATE REMAIN IN MEXICO.** As shown in various lawsuits, the Remain in Mexico program worked, for both the United States and Mexico. The requirement that non-Mexican nationals wait in Mexico for their asylum claim to be heard disincentivized illegal traffic and dramatically reduced the volume of fraudulent asylum claims. And while Mexican officials were initially hesitant, over the course of a year or more they realized that Remain in Mexico dramatically stemmed the flow of illegal traffic through their country, which meant improved security for Mexicans. President Joe Biden could, today, with the stroke of a pen, restore Remain in Mexico and reassert control over the asylum application process.
- 03 / RESTART ASYLUM COOPERATIVE AGREEMENTS (ACA'S).** The ACAs negotiated in 2019 and 2020 allowed genuine asylum seekers to apply for benefits closer to home. To ensure the success of these agreements, the Trump Administration provided funding and other assistance to our partners to improve their asylum systems. During the limited time these agreements were in place, we saw illegal migration significantly decrease because of the possibility of being returned to a third country to apply for asylum rather than being released into the United States. The ACAs, along with Migrant Protection Protocols, helped eliminate fraud from the asylum system.
- 04 / FULLY UTILIZE TITLE 42 AUTHORITIES.** On paper, the Biden Administration is claiming it is enforcing Title 42 at the United States-Mexico border, but in reality it has created truck-sized loopholes that makes it more symbolic than anything else. The Administration could, for example, stop exempting whole populations (minors and families) and demographics (Nicaraguans) from Title 42. Too often bad actors use minors to their own advantage to cross the border. They do this to game the system. Weak enforcement policies only further encourage the abuse of vulnerable individuals.

05 / PROMPTLY REPATRIATE ILLEGAL ALIENS BACK HOME.

We have limited resources, and those that break the law and have no legal right to remain in the country should be removed promptly. Those aliens who have final orders of removal must be removed. Removal sends a clear message that illegal arrival will not be rewarded and frees up our federal law enforcement to do their jobs effectively.

06 / ALLOW ICE TO PERFORM ITS STATUTORY DUTIES.

Today, would-be illegal migrants know that if they make it into the United States, they most likely will not be removed by ICE officers. Through numerous policy changes limiting ICE officers from executing their mission, the Biden Administration has effectively abolished ICE. When there is no consequence for illegal entry, DHS is encouraging illegal entry. Secretary Mayorkas needs to follow the law, eliminate the barriers to ICE's effective operation, and affirmatively state the importance of ICE's mission.

07 / SUPPORT U.S. BORDER STATES.

Illegal immigration is pervasive and challenging, and states need to play a role. The federal government needs to assist border states when illegal immigration becomes so overwhelming that it causes a disaster like the one we are seeing now. The Department of Homeland Security's Federal Emergency Management Agency should declare disasters and provide aid just as it does during natural disasters like hurricanes or flooding. Today, DHS is providing assistance at the border, but it is to more quickly process aliens into the United States - which is the wrong approach, and is also arguably outside of its statutory mission.

08 / DEPLOY NATIONAL GUARD TO THE BORDER.

Strategically deploying the National Guard along the southern border works. While Guard members have historically not participated in the arrests of aliens, they have provided much-needed logistical and support services to the Border Patrol, which frees up Border Patrol agents to do their national security mission of preventing illegal individuals, drugs, and contraband from entering the country. The Biden Administration could deploy Guard troops today.

09 / TARGET THE CARTELS. Mexican cartels are becoming more brazen and are putting our frontline agents and officers at risk. These cartels are now operating freely in Mexico and control vast amounts of territory along the border, much like the FARC did in Colombia in the 1980s. We must directly target and attack the cartels and their actions. We should treat this as a national security and law enforcement threat, redirect the priorities of our intel community, examine offensive cyber operations, and take other proactive action. Where possible, we should partner with Mexico. But we should never forget that border security and national security are unilateral obligations of the federal government to its people.

10 / HOLD MEXICO AND CENTRAL AMERICA ACCOUNTABLE.

The United States should adopt a carrot-and-stick approach regarding Mexico and other nations in the Western Hemisphere. For example, we can partner with the Northern Triangle countries to help them become 21st-century economies and true regional partners. Modern, economically strong sovereign partners do not see hundreds of thousands of their citizens leave, nor do they want that to happen. However, this assistance should not be without strings. The United States should establish specific metrics and benchmarks countries need to achieve and be ready to withhold such assistance until progress can be made.

11 / SUPPORT THE MEN AND WOMEN OF DHS.

You cannot expect a workforce to succeed when your policies and actions adversely impact morale. Directing law enforcement officers to not enforce the law, imposing vaccine mandates, or simply not having their backs (i.e., Border Patrol horse patrol comments) as they undertake their difficult jobs is a recipe for disaster. DHS leadership and President Biden need to support their employees both in their daily missions and against the media and other hostile actors.

12 / CHANGE THE MESSAGING. The current communications strategy from DHS is flawed and not working. Actions speak louder than words. The DHS Secretary needs to highlight removals and expulsions, highlight current obstacles to illegal entry, and send the message to foreign nationals that they will not get a free ticket into the United States. Anything less, and the current crisis will only continue and likely get worse.

GETTING THE BORDER UNDER CONTROL IS WELL WITHIN THE POWERS OF THE EXECUTIVE BRANCH. IT WAS DONE BEFORE DURING THE TRUMP ADMINISTRATION AND CAN BE DONE AGAIN.