



Testimony of Dr. Laura Dawson Executive Director of the U.S-Canada Future Borders Coalition

for a Hearing before the HoU.S.e Committee on Homeland Security Subcommittee on Oversight, Investigations, and Accountability

Tuesday March 28, 2023

Good morning, Chairman Bishop and Members of the Committee. Thank you for the opportunity to speak to you today.

My name is Dr. Laura Dawson and I am the Executive Director of the Future Borders Coalition – We are a U.S.-Canada organization dedicated to building better borders for travel and trade.

First, I'd like to talk to you about the importance of the northern border for U.S. prosperity and jobs.

The United States and Canada boast the world's longest international border, spanning 5525 miles, adjacent to the territory of 13 U.S. states and eight Canadian provinces and territories, under the management of 119 official land border crossings

Every day, 400,000 people and \$2 billion in trade cross the border. The vast majority of those crossings are problem free.

On the trade side, Canada is the largest buyer of U.S. products for 30 U.S. states

Canada buys \$300 billion in goods and \$100 billion in services annually from the United States.

Canada buys more from the U.S. than do the UK, Japan, and Germany combined.

The United States and Canada build things together through integrated and effective supply chains, building good jobs at in both countries and competitiveness in the world.

On travel, Canada is the United States' largest source of tourists and tourism revenue. Valued at around \$23 billion per year during the pre-COVID period, tourist services used to be the United States' sixth largest export to Canada.¹

¹ See U.S. Travel Canada Factsheet 2018

I use the past tense, because while air travel numbers have recovered post pandemic, passenger vehicle crossings and day trips have not.² This is especially difficult for border communities in remote areas such as Grand Forks, North Dakota, and Sault Ste Marie, Michigan which are closer to Canadian population centers than American ones.³

Adding new impediments to cross the border hurts the prosperity of Americans and Canadians. This does not mean abrogating our shared commitment to border security but it does mean having a realistic view of what our challenge areas are and how to address them.

We have heard recently about multi-thousand percent increases in CBP “encounters” on the U.S.-Canada border in recent years but it’s important to compare apples to apples. The data presented by the Northern Border Security Caucus compares the present day with early 2021 when land borders were closed due to COVID for all non-essential travel.⁴

It’s also important be clear on what we’re talking about so that we respond appropriately.

What do we mean by “encounters”? These can be anything from an irregular migration crossing to someone showing up at the border without a passport or vaccination record.

Clearly, the security priority should be irregular migration that takes place between border crossings. Of the 165,000 northern border encounters reported by CBP since the start of FY2022, only 2.7 percent of these occurred between official border ports of entry.

In absolute terms, we are talking about some 4500 people being stopped from migrating from Canada into the U.S. This is not nothing, and this challenge must be dealt with appropriate tools, border staffing, and cooperation between the United States and Canada.

And, while my role here is not to pit U.S.-Canada border against the U.S.-Mexico border, it is important to maintain a sense of proportion. Between October 1, 2022 and February 28, 2023, just 0.5 percent (one half of one percent) of U.S. Border Patrol encounters outside normal Ports of Entry occurred along the U.S.-Canada border.

² In January 2023, Canadian residents returned from 2.7 million trips to the United, four times the number taken in January 2022 (690,200) and 89.4% of the pre-pandemic level from the same month in 2020. The number of trips returning by air was 1.1 million, higher (+18.2%) than the same month in 2020, exceeding the pre-pandemic level for the fifth consecutive month since September 2022. Of the total return trips by Canadian residents in January 2023, 1.6 million trips were by automobile, nearly two-thirds (64.6%) of which were same-day (Source: Statistics Canada).

³ See Tu-Uyen Tran, “Canadian shoppers and tourists return to border cities but in smaller numbers than pre-pandemic,” *Federal Reserve Bank of Minneapolis* (July 25, 2022).

<https://www.minneapolisfed.org/article/2022/canadian-shoppers-and-tourists-return-to-border-cities-but-in-smaller-numbers-than-pre-pandemic>

⁴ See Alexander Panetta, "Republicans talked about the Canadian border. They skipped all sorts of details," *Canadian Broadcasting Corporation* (March 3, 2023). Data cited from U.S. CBP and Canada Border Services Agency (CBSA) sources. <https://www.cbc.ca/news/world/republicans-canada-border-analysis-1.6767883>

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What does safe and effective U.S. Canada border management look like?

On immigration, the first thing to keep in mind is that Canada, as a sovereign nation, may have different rules when it comes to immigration but these are not looser or easier than the U.S. -- just different. Canada has a well-developed skills-based migration program, it has temporary foreign worker programs that welcome specialized workers for ongoing work periods in Canada punctuated by returns to home countries, work authorization that is unconnected to citizenship. Canada also has a successful program for community-based sponsorship of new refugees. Many of the lessons from the Canadian program have been U.S.ed as a model for the [U.S. Welcome Corps](#) program.

As we look to the future, Canada and the United States must work together to help manage the push factors that are sending asylum seekers to our borders. Both countries have a role to support democratization and stability in Latin America and the Caribbean, thereby helping to help mitigate the crisis on the U.S. southern border and ensure the burden does not rest on the U.S. alone.

Where there are frictions, Canada and the U.S. have a long history of working together to find equitable and effective solutions, such as the recently-announced amendments to the [Safe Third Country Agreement](#) which contributed to surging numbers of asylum seekers crossing into Canada at non-border posts. To help share the burden with the U.S, Canada agreed to accept an additional 15,000 asylum seekers per year from Western Hemisphere countries and work with the U.S. to promote lawful labor mobility pathways.

On law enforcement, one of the great strengths of the United States-Canada relationship is that American and Canadian officials have a personal relationship with their counterparts and are in communication every single day. There is no other country for which this is the case. When there is a question or problem U.S. and Canadian officials have each other's backs.

But, sometimes person-to-person relationships are not enough. There are also formal mechanisms for collaboration such as the [Shiprider](#) program where jointly crewed vessels enforce the law on both sides of the border in international waterways. There are trusted trader and trusted traveler programs, joint deployments U.S. ATF and DEA officials and the RCMP, and numerous intelligence-sharing agreements to share information on cross border crime and prevent immigration fraud. Many of these initiatives are advanced through the

[Cross-Border Crime Forum](#). Launched in 2022, this is a bilateral effort to tackle such joint challenges as cybercrime, violent extremism, human smuggling, and firearms.

Support for CBP

I am firmly convinced that the U.S.-Canada Border is strong, secure, and a conduit for prosperity and employment in both of our nations. But that doesn't mean there isn't room for improvement. I urge all members of Congress to support investment in U.S.-Canada border infrastructure, bilateral economic development programs, and to provide the dedicated men and women who are our border officials with the financial resources, tools,

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and technology they need to build and sustain the smart and secure border of the 21st century.

An investment in northern border staffing and infrastructure helps both security and commerce at the same time. Sufficient staff means that trusted traders can sail through designated corridors without excessive wait times. Infrastructure modernization means that bridges, tunnels, road and rail crossings that can meet volume demands and are resilient in the face of climate challenges and cyber attacks.

State-of-the-art technologies such as AI sensors for vehicles and facial biometric tools mean that officials don't have to make on-the-spot judgements about admissibility with insufficient data. With the right technology and the staffing to use it, officers can confirm admissibility using data collected and verified before the vehicle reaches the border crossing.

Airports and even cruise ships play a role in securing the U.S. border. U.S.-Canada preclearance and trusted traveler programs filter out bad actors before they reach U.S. soil. They are also good for the economy, inspiring even more Canadian tourists to spend money and time in the U.S.

The secure, and prosperous U.S.-Canada border is unique in the world and cannot be taken for granted. It is both a shared benefit and a shared responsibility for our two nations.

Additional Information

Cross-Border Crime Forum

<https://www.jU.S.tice.gov/opa/pr/U.S.-and-canada-reestablish-cross-border-crime-forum>

Canada Travel

https://www150.statcan.gc.ca/n1/en/subjects/travel_and_tourism/international_travel

U.S. Travel https://www.U.S.travel.org/sites/default/files/2022-08/inbound-travel-marketprofile_ca_mx_fin.pdf

Testimony of Andrew R. Arthur
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To the Subcommittee on Oversight, Investigations, and Accountability
United States House of Representatives
Committee on Homeland Security

For A Hearing Titled:
“Biden’s Growing Border Crisis: Death, Drugs, and Disorder on the Northern Border”
March 28, 2022
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Room 310, Cannon House Office Building
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Chairman Bishop, Ranking Member Ivey, and members of the subcommittee, I thank you for inviting me here today to discuss the increasing insecurities at our Northern border.

Lost amidst the chaos at the Southwest border is a burgeoning surge of migrants at the Northern border—the international boundary between the United States and Canada. While the number of U.S. Customs and Border Protection (CBP) Northern border encounters is low compared to the Southwest border, what is happening at the Northern border is still troubling— particularly in the Border Patrol’s Swanton (Vt.) Sector.

The Northern Border

The Northern Border is massive, stretching 5,525 miles¹ and separating seven Canadian provinces (New Brunswick, Québec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia) and one territory (Yukon) from 13 U.S. states (Maine, New Hampshire, Vermont, New York, Pennsylvania, Ohio, Michigan, Minnesota, North Dakota, Montana, Idaho, Washington, and Alaska).²

Some 2,380 of those boundary miles cut across bodies of water, including the St. Lawrence River and Seaway, four of the five Great Lakes (Lake Ontario, Lake Erie, Lake Huron, and Lake Superior), and through Boundary Bay, the Strait of Georgia, the Haro Strait, and the Pacific Ocean.

By contrast, there are 3,145 miles of Northern land border³, much of it rugged, isolated, and relatively unpopulated.

There are about 120 land-border ports of entry along the Northern border³, through which \$2.6 billion in goods and services pass daily.⁴ As the State Department explains:

Canada and the United States are each other’s largest export markets, and Canada is the number one export market for more than 30 U.S. states. In addition, Canada is the single largest foreign supplier of energy to the United States.⁶

Northern Border Patrol Sectors

¹ “Boundary Facts”. Int’l Boundary Comm. (undated). Source: <https://www.internationalboundarycommission.org/en/the-boundary-and-you/interestingfacts.php#:~:text=The%20International%20Boundary%20Commission%2C%20under,on%20256%20Official%20boundary%20maps>.

² Id.

³ Id.

³ “U.S. Relations With Canada”. U.S. Dep’t of State (undated). Source: <https://www.state.gov/u-s-relations-withcanada/>.

⁴ Id.

⁶ Id.

There are eight Border Patrol sectors along the Northern border.⁵

The easternmost is Houlton Sector⁸, which has jurisdiction over the state of Maine, with stations in Van Buren, Jackman, Fort Fairfield, Houlton, Rangeley, and Calais, Me.⁶

Heading west, the next sector is Swanton⁷, with jurisdiction over about 24,000 square miles including Coos, Grafton, and Carroll Counties in New Hampshire; all of Vermont; and Clinton, Essex, Franklin, St. Lawrence, and Herkimer Counties in New York.⁸

The sector has responsibility for 295 miles of border (203 on land and 92 on water, primarily the St. Lawrence River)⁹, and there are eight stations in Swanton Sector: at Ogdensburg, N.Y.; Massena, N.Y.; Burke, N.Y.; Champlain, N.Y.; Swanton, Vt.; Richford, Vt.; Newport, Vt.; and Beecher Falls, Vt.¹³

Directly to the west of Swanton Sector is Buffalo Sector¹⁰, which has jurisdiction over 29 counties, including all the western portion of New York State, and parts of central New York and Pennsylvania.¹¹ The 450 miles of international border in Buffalo Sector is almost all over water, including Lake Erie and Lake Ontario, the Niagara River, and part of the Saint Lawrence Seaway.¹²

The sector has five stations in New York state (Buffalo, Niagara Falls, Rochester, Oswego, and Wellesley Island), and in Erie, Pa.¹³

Bordering Buffalo Sector to the west is Detroit Sector¹⁴, which has jurisdiction over 863 miles of the Northern border, and the states of Michigan, Indiana, Ohio, and Illinois. The sector is headquartered at Selfridge Air National Guard Base, Mich., and it has four stations in Michigan

⁵ “Border Patrol Sectors”. U.S. Customs and Border Protection (undated). Source: <https://www.cbp.gov/bordersecurity/along-us-borders/border-patrol-sectors>.

⁶ Id.

⁷ “Swanton Sector Vermont”. U.S. Customs and Border Protection (modified July 22, 2022). Source: <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/swanton-sector-vermont>.

⁸ Id.

⁹ Id. ¹³

Id.

¹⁰ “Buffalo Sector New York”. U.S. Customs and Border Protection (modified July 25, 2022). Source: <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/buffalo-sector-new-york/>.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ “Detroit Sector Michigan”. U.S. Customs and Border Protection (modified July 25, 2022). Source: <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/detroit-sector>.

(at Detroit, Marysville, Sault Ste. Marie, and Gibraltar) as well as a station in Port Clinton, Ohio.¹⁵

The adjoining Grand Forks Sector¹⁶ is massive, with jurisdiction over 861 miles of the Northern border (403 on land, 458 on water) in North Dakota and Minnesota.¹⁷ There are six stations in

⁸ “Houlton Sector Maine”. U.S. Customs and Border Protection (modified July 22, 2022). Source: <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/houlton-sector-maine>. the sector, three in North Dakota (Portal, Bottineau, and Pembina) and three in Minnesota (Warroad, International Falls, and Grand Marais), as well as “back-up stations” in Grand Forks, N.D. and Duluth, Minn.²²

Heading west, the next sector is Havre, in Montana²³, with jurisdiction over 456 miles of the Northern border in eastern Montana (ending at the Continental Divide) served by six stations in (at Havre, Plentywood, Scobey, Malta, Sweetgrass, and St. Mary, Mont.).²⁴

In western Montana, Idaho, and eastern Washington is Spokane Sector²⁵, with jurisdiction over 308 miles of the Northern border, including the Cascade Mountain Range and three miles of water boundary.²⁶

Spokane Sector has Eureka and Whitefish Stations in Montana; Bonners Ferry Station in Idaho; and Oroville, Curlew, Colville and Metaline Falls Stations as well as sector headquarters in Spokane in Washington state.²⁷

Responsibility for the western part of Washington state and Alaska falls on Blaine Sector²⁸, with stations in Blaine, Sumas, Bellingham, and Port Angeles, Washington.²⁹

Border Patrol Staffing

Given the awesome length of the Northern border, it is understaffed by any measure, and certainly compared to the 1,954-mile³⁰ U.S. Southwest border, which itself suffers from an unconscionable lack of staffing and resources.

As of the end of FY 2020³¹ (the last year for which published statistics published are available), there were 16,878 Border Patrol agents stationed at the Southwest border, compared to 2,019 total at the eight Northern border sectors (a figure that has remained almost unchanged since FY 2014, and 243 agents fewer than in FY 2010)³².

²² Id.

¹⁵ Id.

¹⁶ “Grand Forks Sector North Dakota”. U.S. Customs and Border Protection (modified July 22, 2022). Source: <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/grand-forks-sector-north-dakota>.

¹⁷ Id.

²³ “Havre Sector Montana”. U.S. Customs and Border Protection (modified July 22, 2022). Source: <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/havre-sector-montana/>.

²⁴ Id.

²⁵ “Spokane Sector Washington”. U.S. Customs and Border Protection (modified Jan. 19, 2023). Source: <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/spokane-sector>.

²⁶ Id. ²⁷ Id.

²⁸ Blaine Sector Washington. U.S. Customs and Border Protection (modified Jan. 19, 2023). Source: <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/spokane-sector>.

²⁹ Id.

³⁰ MIROFF, Nick and BLANCO, Adrian. “Trump ramps up border-wall construction ahead of 2020 vote”. Washington Post (Feb. 6, 2020). Source: <https://www.washingtonpost.com/graphics/2020/national/immigration/border-wallprogress/>.

³¹ “United States Border Patrol, Sector Profile - Fiscal Year 2020”. U.S. Customs and Border Protection (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Fiscal%20Year%202020%20Sector%20Profile%20%28508%29.pdf>

³² “Border Patrol Agent Staffing By Fiscal Year.” U.S. Border Patrol (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2021->

Of those 2,019 Border Patrol agents, 188 were stationed at Houlton Sector, 298 at Swanton Sector, 261 at Buffalo Sector, 406 at Detroit Sector, 171 at Grand Forks Sector, 167 at Havre Sector, 254 at Spokane Sector, and 274 at Blaine Sector.

Despite the already meager level of staffing at the Northern border, when investigators from the Office of the Inspector General (OIG) at the Department of Homeland Security (DHS) visited the Southwest border’s Rio Grande Valley (RGV) Sector in July 2021¹⁸, they found 300 agents from the Northern and Coastal borders there who had been detailed to assist RGV agents.¹⁹

The frequency of agent details from the Northern to the Southwest border was likely best illustrated by an anecdote told by Rep. Tony Gonzales (R-Tex.), as quoted in recent reporting from Canadian outlet CTV²⁰:

Customs and Border Protection officials at the northern border are often called upon to help support their Mexico-U.S. colleagues, said Rep. Tony Gonzales, whose Texas district includes a large swath of the southwestern border.

“Oftentimes, there are more Border Patrol agents from the northern border in my sector than there are in their own areas,” Gonzales said, as he described meeting agents during a shift change last Christmas.

¹⁸ “U.S. Border Patrol Faces Challenges Administering Post-Apprehension Outcomes Consistently Across Sectors”, p.9. Dep’t of Homeland Sec., Off. of the Inspector Gen. (Sept. 13, 2022). Source: <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-68-Sep22.pdf>.

¹⁹ Id.

²⁰ McCarten, James. “House Republicans aim to make Canada-U.S. border part of national security debate”. CTVNews (Feb. 28, 2023). Source: <https://www.ctvnews.ca/canada/house-republicans-aim-to-make-canada-u-border-part-of-national-security-debate-1.6293453>.

“One of the things that I asked was, ‘How many of you all are not from this area?’ Literally, every hand went up, they’re all northern border areas,” he said.

“And I smile, and I go, ‘Welcome to south Texas. Is this your first time here?’ They go, ‘No, no, Tony, this is our fifth time here.’”

That said, Border Patrol agents in the RGV plainly need—and needed-- the help. In FY 2021²¹, RGV agents apprehended more than 549,000 illegal entrants, and an additional 468,124 in FY 2022²²—more than 1.017 million alien apprehensions in just the last two fiscal years.

Those FY 2021 and FY 2022 apprehension numbers were more than 38 percent and 28 percent higher, respectively, than RGV apprehensions in FY 2019 (339,135)²³—a year in which the

[Aug/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20%20FY%202020%29%20%28508%29.pdf/](https://www.cbp.gov/newsroom/stats/nationwide-encounters).

Southwest border had reached such a state of crisis that DHS declared a “border emergency”²⁴. As then-DHS Secretary Kirstjen Nielsen explained at that time:

Today I report to the American people that we face a cascading crisis at our southern border. The system is in freefall. DHS is doing everything possible to respond to a growing humanitarian catastrophe while also securing our borders, but we have reached peak capacity and are now forced to pull from other missions to respond to the emergency.²⁵

The reason why Southwest border apprehensions have reached all-time records under the Biden administration is clear from a March 8 opinion in *Florida v. U.S.*²⁶, a challenge by the state of Florida to the administration’s border release policies.

As Judge T. Kent Wetherell II of the U.S. District Court for the Northern District of Florida explained:

[T]he evidence establishes that [the federal government has] effectively turned the Southwest Border into a meaningless line in the sand and little more than a speedbump for aliens flooding into the country by prioritizing “alternatives to

²¹ “Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

²² Id.

²³ “U.S. Border Patrol Nationwide Apprehensions by Citizenship and Sector in FY2019”. U.S. Customs and Border Protection (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2021Aug/USBORD~3.PDF>.

²⁴ “Secretary Kirstjen Nielsen Statement on Border Emergency”. U.S. Dep’t of Homeland Sec. (Mar. 29, 2019). Source: <https://www.dhs.gov/news/2019/03/29/secretary-kirstjen-nielsen-statement-border-emergency>.

²⁵ Id.

²⁶ *Florida v. U.S.*, ___ F. Supp. 3d ___, No. 3:21-cv-1066-TKW-ZCB (N.D. Fla. Mar. 8, 2023). Source: [http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CPQPAB/\\$file/final+order.pdf](http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CPQPAB/$file/final+order.pdf).

detention” over actual detention and by releasing more than a million aliens into the country—on “parole” or pursuant to the exercise of “prosecutorial discretion” under a wholly inapplicable statute—without even initiating removal proceedings.²⁷

While it may be understandable that additional, experienced agents were needed to assist their overwhelmed colleagues at the Southwest border, it was and is irresponsible to leave an already under-resourced Northern border vulnerable to national-security and humanitarian risks to do so.

Before any administration changes effective policies implemented by a previous administration in a way that could create national-security and humanitarian vulnerabilities, it is incumbent on that new administration to ensure that it has sufficient resources to address such vulnerabilities in advance.

There is no question that the border policies implemented by the Trump administration were effective.

As his first Border Patrol chief, Rodney Scott, explained in a September 2021 letter²⁸ to Senate leadership, President Biden inherited “what was arguably the most effective border security in

our Nation’s history”, only to have “[c]ommon sense border security recommendations from experienced career professionals. . . ignored and stymied by inexperienced political employees”.

It is also patently obvious that President Biden knew a rapid shift away from those Trump-era border policies risked chaos and disaster.

As the Washington Post reported on December 22, 2020⁴⁴, just over a month before Inauguration Day 2021, President-elect Biden vowed to “keep his pledge to roll back the Trump administration's restrictive asylum policies” but would do so “at a slower pace than he initially promised, to avoid winding up with ‘2 million people on our border’”.

As president, however, Biden backtracked on that pledge, quickly reversing⁴⁵ Trump’s successful border policies without “setting up” any promised “guardrails” that would have avoided a “crisis”²⁹ at the Southwest border.

²⁷ Id. at pp. 4-5.

²⁸ Letter from Rodney Scott to Sens. Charles Schumer, Mitch McConnell, Gary Peters, and Rob Portman (Sept. 11, 2021). Source: <https://justthenews.com/sites/default/files/2021-09/Honorable%20Rob%20Portman%20%20US%20Senate%20Secuirty%20Concerns%20-%20Rodney%20Scott.pdf>.

²⁹ MIROFF, Nick and SACCHETTI, Maria. “Biden says he’ll reverse Trump immigration policies but wants ‘guardrails’ first”. Washington Post (Dec. 22, 2020). Source: https://www.washingtonpost.com/national/biden-immigrationpolicy-changes/2020/12/22/2eb9ef92-4400-11eb-8deb-b948d0931c16_story.html.

Consequently, in FY 2022, Border Patrol agents at the Southwest border apprehended more than 2.2 million³⁰ illegal migrants, not counting more than 599,000³¹ other illegal entrants who successfully evaded apprehension to make their way into the United States, identified in statute³² as “got aways”.

CBP Northern Border Encounters

DHS leadership, however, was likely “robbing Peter to pay Paul” when it stripped agents from the Northern border and sent them south, as CBP encounters at the Canadian border have subsequently—and inevitably-- surged.

In FY 2022, CBP encountered 109,535 aliens at the Northern border, four times as many (27,180) as they had the fiscal year before³³. Already, in just the first five months of FY 2023,

⁴⁴ MIROFF, Nick and SACCHETTI, Maria. “Biden says he’ll reverse Trump immigration policies but wants ‘guardrails’ first”. Washington Post (Dec. 22, 2020). Source: https://www.washingtonpost.com/national/biden-immigrationpolicy-changes/2020/12/22/2eb9ef92-4400-11eb-8deb-b948d0931c16_story.html.

⁴⁵ LAW, Rob. “Biden’s Executive Actions: President Unilaterally Changes Immigration Policy”. Center for Immigration Studies (Mar. 15, 2021). Source: <https://cis.org/Report/Bidens-Executive-Actions-PresidentUnilaterally-Changes-Immigration-Policy>.

CBP has encountered 68,784 aliens³⁴ at the Northern border, and at their current pace, CBP agents and officers will record more than 165,000 CBP Northern border encounters by the end of the fiscal year.

“Encounter” in this context is a term of art, defined as the sum of aliens deemed inadmissible at U.S. ports of entry by CBP officers in the agency’s Office of Field Operations (OFO) plus aliens apprehended by Border Patrol agents after entering the United States illegally at the border between those ports.

Of those CBP Northern border encounters in FY 2022, 107,297 of them involved aliens deemed inadmissible by CBP officers at the ports.³⁵

³⁰ “Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023) (2,206,436 Border Patrol Southwest border apprehensions in FY 2022). Source: <https://www.cbp.gov/newsroom/stats/nationwideencounters>.

³¹ MELUGIN, Bill and BLITZER, Ronn. “Border officials count 599,000 'gotaway' migrants in Fiscal Year 2022: source”. Fox News (Oct. 2, 2022). Source: <https://www.foxnews.com/politics/border-officials-count-599000-gotawaymigrants-fiscal-year-2022-source>.

³² 6 U.S.C. § 223(a)(3). (“Border Metrics”. “Got away. The term ‘got away’ means an unlawful border crosser who- (A) is directly or indirectly observed making an unlawful entry into the United States; (B) is not apprehended; and (C) is not a turn back.”). Source: [https://uscode.house.gov/view.xhtml?req=\(title:6%20section:223%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:6%20section:223%20edition:prelim)).

³³ “Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

³⁴ Id.

³⁵ Id.

Nearly 38 percent of those encounters involved Canadian nationals, likely aliens with criminal convictions that rendered them inadmissible to the United States³⁶, or visitors without proper documents that would allow them to be admitted³⁷ to the United States. Whatever the reason, however, there was a 152-percent increase in FY 2022 in the number of Canadian nationals deemed inadmissible at the Northern border ports compared to FY 2021.³⁸

Of somewhat greater concern is the fact that the number of “other than Canadian” nationals deemed inadmissible at the Northern border ports jumped sixfold between FY 2021 and FY 2022 — from around 10,250 to nearly 67,000.

Almost 16 percent (17,094)³⁹ of the aliens deemed inadmissible at the Northern border ports in FY 2022 were nationals of India, around 10 percent of them (6,686)⁴⁰ were from China, 1,938⁴¹ came from Colombia, 1,521 were from the Philippines, and 1,314 were from Ukraine. Most interesting were the 31,941 aliens deemed inadmissible at the Southwest border who came from “other” countries around the world, that is countries that CBP does not include in its specific list of the top 21 “migrant-sending” countries.⁵⁹

Northern sector Border Patrol apprehensions increased 144 percent between FY 2021 (916) and FY 2022 (2,238)⁴², and already in the first five reporting months of FY 2023, agents at the Northern border have exceeded last fiscal year’s total, apprehending 2,856 illegal entrants through the end of February, and on pace for more than 6,850 apprehensions this fiscal year.

A handful (44) of the aliens apprehended in FY 2023 have been Canadians, almost certainly aliens who were otherwise inadmissible through the legal admissions process.⁴³

Meanwhile, the number of Haitians apprehended there has jumped from eight in FY 2022 to 161⁴⁴, the number of Venezuelans from five to 76⁴⁵, and Border Patrol apprehensions of

³⁶ See section 212(a)(2) of the Immigration and Nationality Act (2023) (“Criminal and related grounds”). Source: <https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid%3AUSC-prelim-title8-section1182>.

³⁷ Id. at para. (a)(7) (“Documentation requirements”).

³⁸ “Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁵⁹ Id.

⁴² Id.

⁴³ See fns. 53 and 54.

⁴⁴ “Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

⁴⁵ Id.

nationals of “other” countries at the Northern border has already reached 77 percent of last year’s total (from 204 in FY 2022 to 157 in the first five months of FY 2023)⁴⁶.

Notably, Mexican apprehensions are almost 82 percent higher in FY 2023 (1,604) than they were in FY 2022 (882), and Border Patrol is on pace to apprehend nearly 3,850 Mexican nationals at the Northern border this fiscal year.⁴⁷ I will explain those Mexican apprehensions, below.

These projections are likely low, however, because the 628⁴⁸ Border Patrol apprehensions in February (the shortest month of the year) are the highest monthly total at the Northern border in the last four fiscal years, more than four times higher than last February (122)⁴⁹, but more importantly, nearly twice as high as February 2020 (256)⁵⁰, the last month before the Covid-19 pandemic was declared.⁵¹

Swanton Sector

As significant as these increases are, they only tell part of the story, because one Northern border sector—Swanton—has borne the brunt of this surge in migrant entries.

Of the 628 illegal migrants apprehended at the Northern border in February, 418⁵²—66.5 percent—were caught in the Swanton Sector. What’s more, 67.6 percent (1,932)⁵³ of the 2,856 migrants apprehended at the Northern border thus far in FY 2023 were stopped by agents there, up from 47.6 percent (1,065)⁵⁴ of the 2,238 total illegal entrant apprehensions at the Northern border in FY 2022.

Why would the agents at a 295-mile portion of a 5,525-mile border in Swanton Sector be seeing such a surge in illegal migration? Proximity likely has a lot to do with it.

It is about 50 miles⁷³ from the biggest nearby Canadian city — Montreal, Québec (population 1,785,042)⁷⁴ — to the U.S. border just north of the town of Swanton, Vt., and 40 miles⁷⁵ to the U.S. border north of Champlain, N.Y. (again, also in Swanton sector). Nearly all (1,383)⁷⁶ of those Swanton sector apprehensions in FY 2023 have occurred on the New York side.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ See fn. 80.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

The city’s Montreal-Trudeau International Airport (YUL) is the fourth busiest airport in Canada in terms of passenger volume⁷⁷, serving 5.2 million passengers per year. A Google search⁷⁸ shows that there are three nonstop flights from Mexico City to YUL daily (two on Aeromexico and one on Air Canada), and numerous cheaper flights with connections outside the United States as well.

Most of the migrants apprehended in Swanton Sector (1,185 out of 1,932 or 61 percent)⁵⁵ in FY 2023 have been Mexican nationals. There are various, logical reasons why Mexican nationals would choose to fly to YUL and cross the Northern border instead of simply crossing from Mexico into the United States.

Since the Centers for Disease Control and Prevention (CDC) issued its first order⁵⁶ under Title 42 of the U.S. Code⁵⁷ directing the expulsion of illegal migrants at U.S. land borders in response

⁷³ ARTHUR, Andrew. “Migrant Surge — At the Northern Border”. Center for Immigration Studies (Feb. 23, 2023). Source: <https://cis.org/Arthur/Migrant-Surge-Northern-Border>. ⁷⁴

“Montréal Population 2023”. World Population Review (2023). Source: <https://worldpopulationreview.com/canadian-cities/montreal-population>.

⁷⁵ ARTHUR, Andrew. “Migrant Surge — At the Northern Border”. Center for Immigration Studies (Feb. 23, 2023). Source: <https://cis.org/Arthur/Migrant-Surge-Northern-Border>.

⁷⁶ Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

⁷⁷ WONG, Daniel. “Top 5: A Look At Canada's Busiest Airports By Passenger Traffic”. Simple Flying (Jun. 13, 2022). Source: <https://simpleflying.com/canada-busiest-passenger-airports/#edmonton-international-airport-yeg--2-8million-passengers>.

⁷⁸ Source: https://www.google.com/travel/flights/search?tfs=CBwQAhojagwIAhIIL20vMDRzcWoSCjIwMjMtMDQtMDdyBwgB_EgNZVUwaI2oHCAESA1IvTBIKmjAyMy0wNC0xMXIMCAISCC9tLzA0c3FqcAGCAQsI_AUAB_SAGYAQE&tfu=EgYIARABGAA&hl=en&gl=us&curr=USD.

⁵⁵ Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

⁵⁶ “Order Suspending the Introduction of Certain Persons from Countries Where a Communicable Disease Exists”. U.S. Dep’t of Health and Human Servs., Centers for Disease Control and Prevention (Mar. 20, 2020). Source: https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf. Accessed on 27 Feb. 2023.

⁵⁷ See id.; 42 U.S.C. § 265 (2023) (“Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.”). Source: [https://uscode.house.gov/view.xhtml?req=\(title:42%20section:265%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:265%20edition:prelim)).

to the Covid-19 pandemic in March 2020, 89.7 percent⁵⁸ of Mexican nationals apprehended by Border Patrol at the Southwest border have been expelled under Title 42. Many of the rest have likely been allowed to “voluntarily depart” back to Mexico in lieu of removal.

By contrast, just 8.25 percent⁵⁹ of the Mexican nationals apprehended at the Northern border in that same period have been expelled under Title 42. That’s likely because, unlike Mexico, Canada is under no obligation to accept the return of Mexican nationals who entered the United States from its territory who the U.S. government is trying to expel.

It was not surprising, then, that CBP announced⁶⁰ in early March that it would be detailing 25 extra agents—including agents from the Southwest border—to Swanton Sector to help deal with the flow. According to a CBP spokesman quoted by NBC News:

While the apprehension numbers are small compared to other areas with irregular migration flows, Swanton Sector apprehensions constitute a large change in this area. . . The deployed team will serve as a force multiplier in the region and assist to deter and disrupt human smuggling activities being conducted in the Swanton Sector area of responsibility.⁶¹

The Costs of Visa-Free Travel from Mexico to Canada

The price of a plane ticket aside, it is not that difficult for Mexican nationals to get into Canada.

The Canadian government has vacillated over the years on the issue of whether Mexican nationals should be permitted to enter to the country without first obtaining a visa, as The Atlantic explained in 2016:

From 2005 to 2008, asylum claims in Canada had tripled, and many of those were from Mexican citizens. In 2009, the conservative Canadian government, headed by then-Prime Minister Stephen Harper, imposed the visa restrictions to cut down on asylum applications. Last year, [now-Prime Minister Justin] Trudeau ran on a platform to repair the country’s relationship with its North American partners, which included a promise to rid the visa requirement for Mexico.⁶²

⁵⁸ Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

⁵⁹ Id.

⁶⁰ AINSLEY, Julia and MARTINEZ, Didi. “U.S. transfers Border Patrol agents to northern border as migrant crossings from Canada rise”. NBC News (Mar. 6, 2023). Source: <https://www.nbcnews.com/politics/immigration/ustransfers-border-patrol-agents-canada-border-migrant-crossings-rcna73623/>.

⁶¹ Id.

⁶² PHIPPEN, J. Weston. “The Opening of Visa-Free Travel From Mexico to Canada”. The Atlantic (Jun. 28, 2016). Source: <https://www.theatlantic.com/news/archive/2016/06/canada-mexico-visa/489203/>.

Trudeau made good on that promise (in exchange for, among other concessions, an agreement by the Mexican government to allow the sale of Canadian beef there for the first time since the outbreak of mad-cow disease in Canada in 2003⁶³), and a visa exemption for Mexican nationals

traveling to Canada has been in place since December 1, 2016 (perhaps coincidentally, 24 days after Donald Trump was elected president).⁶⁴

Many of the costs and risks associated with that shift in visa policy are detailed on the website of Public Safety Canada⁸⁹:

When the visa requirement was lifted, funding in the amount of \$212 million over five years and \$47 million ongoing was sought across all partners to manage the immigration-related risks. Ongoing pressures due to irregular migration associated with the Mexico visa exemption contributed to the Government's decision to allocate additional funding for Canada's asylum system in Budget 2019.

Trends and risks associated with the visa exemption for Mexican nationals are expected to continue. Likewise, funding pressures on the [Canada Border Services Agency, "CBSA"⁶⁵] are expected to grow as the Agency manages the risks associated with these migration trends.

The CBSA will continue to work with partners to monitor and to respond to those risks to ensure the integrity of Canada's immigration system and the safety and security of Canadians.

Of note, at the time of the visa exemption, the Government set a threshold for asylum claims which would trigger a reconsideration of the visa exemption [Redacted in original]. However, this number should not be made public.⁶⁶

Apparently, the Canadian government's (still redacted) threshold for Mexican asylum claims has not yet been met, though 11,000 individuals who traveled on Mexican passports have applied for

⁶³ Id.

⁶⁴ "Mexico Visa Exemption". Public Safety Canada (modified Oct. 15, 2020). Source: <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200621/037/index-en.aspx>. ⁸⁹ See "About Public Safety Canada". Public Safety Canada (modified Aug. 10, 2022) ("Public Safety Canada was created in 2003 to ensure coordination across all federal departments and agencies responsible for national security and the safety of Canadians. Our mandate is to keep Canadians safe from a range of risks such as natural disasters, crime and terrorism. Our mission is to build a safe and resilient Canada. Our vision is to, through outstanding leadership, achieve a safe and secure Canada and strong and resilient communities."). Source: <https://www.publicsafety.gc.ca/cnt/bt/index-en.aspx>.

⁶⁵ See "Canada Border Services Agency". Government of Canada (modified Mar. 21, 2023) ("The Canada Border Services Agency (CBSA) facilitates the flow of legitimate travellers and trade. The agency also enforces more than 100 acts and regulations that keep our country and Canadians safe."). Source: <https://www.cbsa-asfc.gc.ca/menueng.html>.

⁶⁶ Id.

asylum since the visa exemption was implemented (Mexico is the second leading source for asylum claims in Canada after Haiti⁶⁷), but visa-free travel from Mexico to Canada has not been without costs to the federal government in Ottawa or risks to that country and the United States.

My colleague, Todd Bensman, recently detailed some of those costs and risks, explaining that the renewal of visa-free travel from Mexico to Canada brought about a result that “was both predictable and predicted at the time”⁶⁸:

By mid-July 2017, after Trudeau restored the visa waiver to Mexicans, leaked [CBSA] intelligence reports said Mexican cartel operatives — “drug smugglers, human smugglers, recruiters, money launders and foot soldiers” — were turning up in greater numbers than ever before. The cartels began facilitating the human smuggling business of other Mexicans south over the America’s northern border, just as they did all along the southern border.

Global News, which published the intelligence reports in July 2017, quoted them as saying Mexican crime groups such as the ultra-violent Sinaloa cartel had turned up in Canada and would “facilitate travel to Canada by Mexicans with criminal records”.

Besides the Sinaloa Cartel, Mexican entrants were identified as belonging to La Familia Michoacana, Jalisco New Generation, and Los Zetas cartels.

For instance, whereas the reports said 37 Mexicans linked or possibly linked to organized criminal groups had entered between 2012 and 2015, 65 involved in “serious crimes” were identified midway through just 2017, compared to 28 in 2015. Another 15 Mexicans cited for national security problems were caught in the first six months of 2017, more than the two previous years combined.⁶⁹

In that vein, the Toronto Sun reported in May 2019:

Hundreds of criminals connected to the illegal drug trade are freely plying their trades as importers, go-betweens and hitmen in Canada — according to Quebec

⁶⁷ “Claims by Country of Alleged Persecution – 2022”. Immigration and Refugee Board of Canada (modified Mar. 1, 2023). Source: <https://www.irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat2022.aspx>.

⁶⁸ BENSMAN, Todd. “The Canadian Policy Behind the Surge of Illegals – and Mexican Cartel Operatives – at the Northern Border”. Center for Immigration Studies (Mar. 22, 2023). Source: <https://cis.org/Bensman/CanadianPolicy-Behind-Surge-Illegals-and-Mexican-Cartel-Operatives-Northern-Border>.

⁶⁹ BENSMAN, Todd. “The Canadian Policy Behind the Surge of Illegals – and Mexican Cartel Operatives – at the Northern Border”. Center for Immigration Studies (Mar. 22, 2023). Source: <https://cis.org/Bensman/CanadianPolicy-Behind-Surge-Illegals-and-Mexican-Cartel-Operatives-Northern-Border>.

news outlet TVA Nouvelles — largely because Prime Minister Justin Trudeau’s Liberal government dropped the visa requirement for Mexican travelers.⁷⁰

Four hundred such criminals according to that reporting, to be exact. That article and similar ones prompted Public Safety Canada to craft a response.⁷¹

In its response, Public Safety Canada asserted that after checking its databases, CBSA had “determined that the number of inadmissibility cases for all types of criminality for Mexican

foreign nationals during this period referenced by the media was” only “238”, 27 of whom were “reported inadmissible due to links to known organized criminality”.⁷²

Twenty-one of those 27 were gang members, three were members of cartels, and three others “were involved in human smuggling organizations”.⁷³ An additional 154 individuals “were reported as inadmissible due to serious criminality which includes convictions for the following crimes: sexual assault, aggravated assault, drug trafficking, child pornography, rape of a child, manslaughter, drug trafficking”.⁹⁹

The Movement of Drugs Across the Northern Border

Which brings me to the movement of drugs across the Northern border. As the White House’s Office of National Drug Control Policy⁷⁴ (ONDCP) has explained:

Transnational Criminal Organizations (TCOs) operating on both sides of the United States Canada border (Northern Border) often exploit the international boundary’s vulnerabilities for illegal activities, at times in conjunction with outlaw motorcycle gangs. They smuggle illegal drugs as well as both weapons and the illicit proceeds from drug sales between the two countries. The predominate drugs trafficked across the Northern border are cocaine, which is smuggled into Canada, and MDMA (ecstasy), which is smuggled into the United States. Though marijuana, heroin, and illicitly manufactured fentanyl are also trafficked across the Northern Border, their volume is substantially less than that which is trafficked across the Southwest Border.

⁷⁰ GORDON, Graeme. “100s of drug cartel members have entered Canada since Liberals waived Mexican visa: Report”. Toronto Sun (May 24, 2019). Source: <https://torontosun.com/news/crime/100s-of-drug-cartel-membershave-entered-canada-since-liberals-waived-mexican-visa-report>.

⁷¹ “Mexican Drug Cartels.” Public Safety Canada (modified Sep. 10, 2020). Source: <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200621/fp001/index-en.aspx/>

⁷² Id.

⁷³ Id.

⁹⁹ Id.

⁷⁴ “National Drug Control Strategy, Northern Border Counternarcotics Strategy”, p.1. Office of National Drug Control Policy (2022). Source: <https://www.whitehouse.gov/wp-content/uploads/2022/04/National-NorthernBorder-Counter-Narcotics-2022Strategy.pdf>.

....

The TCOs occasionally exploit the mountain valleys in Washington and Idaho and the deep ravines in Montana, while the waterways connecting and bordering the United States and Canada create a conducive environment to move contraband across the international border. Quickly traveling across the international border and making landfall on the opposite side, individuals and TCOs can take advantage of the narrow width of many river areas along the border to escape apprehension when detected by United States law enforcement authorities. In the winter months, snowmobiles and vehicles are used to transport contraband over frozen rivers and lakes. Similarly, apprehending maritime smugglers is challenging in the Pacific Northwest, due to a high number of short smuggling routes across the Strait of Juan de Fuca, and the high volume of legitimate maritime traffic between the United States and Canada.

According to the U.S. Drug Enforcement Administration (DEA)⁷⁵, the supply of MDMA/ecstasy in the U.S. market is controlled by Asian TCOs in this country, which collaborate with Asian TCOs in Canada. It continues: “MDMA, in both tablet and powder form, is typically either imported from China to Canada or manufactured in clandestine laboratories in Canada, then smuggled across the Northern Border into the United States.”⁷⁶

The DEA explains that Indian reservations⁷⁷ on U.S. borders are commonly exploited by crossborder drug smugglers, and in the particular case of the Northern border:

TCOs [] smuggle large amounts of illicit drugs into the United States through reservations that border Canada, especially the St. Regis Mohawk Reservation in New York, commonly referred to as the Mohawk Nation at Akwesasne. TCOs smuggle marijuana and thousands of MDMA tablets into the United States and multi-kilogram quantities of cocaine into Canada through the reservation.⁷⁸

The police force for the Mohawk Council of Akwesasne (MCA), which has responsibility for law-enforcement on the Canadian side of the Akwesasne Mohawk territory, recently received a

⁷⁵ “2020 National Drug Threat Assessment”, at p.75. U.S. Dep’t of Justice, Drug Enforcement Admin. (Mar. 2021). Source: https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

⁷⁶ Id.

⁷⁷ Id. at p. 83.

⁷⁸ Id.

C\$6 million grant⁷⁹ from the Québec provincial government to fight gun smuggling across the St. Lawrence River.

In February⁸⁰ the MCA issued a notice about the increase in illegal entries, reminding residents that “human smuggling is a crime and poses serious concerns for not only the individual(s) committing the act but the entire community of Akwesasne”.

All that illicit activity has had a negative impact on the lives of those living in the reservations:

The widespread availability and abuse of drugs in Indian Country, coupled with drug trafficking groups operating in Indian Country, contribute to high rates of crime on reservations. Due to the wide range of violent and property crimes in which traffickers engage, the crime rates on some reservations can be higher than the national averages for similar crimes. [Drug trafficking organizations “DTOs”] engage in these crimes to facilitate their operations, while users generally engage in such crimes to support their drug use.⁸¹

CBP Northern Border Drug Seizures

In the first five months of FY 2023⁸², CBP officers at the ports and Border Patrol agents have seized 3,500 pounds of drugs, down significantly from FY 2022⁸³, when CBP drug seizures at the Northern border totaled more than 60,000 pounds, which itself was a decline from drugseizure totals in FY 2020⁸⁴ (nearly 85,000 pounds of drugs).

Those totals are not quite as positive as they may appear, as I will explain below. In any event, the largest decline has been in marijuana seizures, which has had a significant effect on the total decline.

In FY 2020⁸⁵, CBP seized 54,700 pounds of marijuana at the Northern border, while marijuana seizures increased there in FY 2021⁸⁶ (to 79,600 pounds).

⁷⁹ Clarke, Celia. “Akwesasne police force in Canada gets \$6M to stop gun smuggling from the U.S.” NCPR (Jun 28, 2022). Source: <https://www.northcountrypublicradio.org/news/story/46130/20220628/akwesasne-police-force-in-canada-gets-6m-to-stop-gun-smuggling-from-the-u-s>.

⁸⁰ “Recent Increase in Illegal Entries to Community”. Mohawk Council of Akwesasne (Feb. 17, 2023). Source: <http://www.akwesasne.ca/recent-increase-in-illegal-entries-to-community/>.

⁸¹ “2020 National Drug Threat Assessment”, at p.83. U.S. Dep’t of Justice, Drug Enforcement Admin. (Mar. 2021). Source: https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

⁸² “Drug Seizure Statistics FY2023”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

Northern border marijuana seizures dropped to 23,200 pounds in FY 2022⁸⁷, and thus far in FY 2023¹¹⁴, CBP has seized less than a ton (1,900 pounds) of the narcotic.

For years, high-potency Canadian-grown marijuana, and in particular a popular strain known as “BC [British Columbia] bud”, was a popular illicit drug on both sides of the Northern border. According to a DEA Drug Intelligence Brief from December 2000⁸⁸:

Marijuana and other cannabis products are the most widely abused and readily available illicit drugs in Canada. Canadian law enforcement intelligence indicates that marijuana traffickers there increasingly are cultivating cannabis indoors. Such indoor grow operations have become an enormous and lucrative illicit industry, producing a potent form of marijuana that has come to be commonly known as “BC Bud.” Canadian officials estimate that cannabis cultivation in British Columbia is a billion-dollar industry and that traffickers smuggle a significant portion of the Canadian harvest into the United States.

Canadian growers produce cannabis plants with powerful buds, often using sophisticated hydroponic cultivation techniques. While the term “BC Bud” literally refers to the bud of the female cannabis plant grown in British Columbia, the term has become synonymous in the popular media for high-potency Canadian-grown marijuana. Such marijuana has a THC1 content ranging from

15 percent to as much as 25 percent, far more potent than the naturally grown cannabis plants of the 1970s, which had a THC content of only 2 percent.⁸⁹

While the Canadian federal government and provincial governments regularly and rigorously policed marijuana cultivation operations in the early 2000s⁹⁰, the federal government there has

⁸⁷ Id. 114

Id.

⁸⁸ “Drug Intelligence Brief, BC Bud: Growth of the Canadian Marijuana Trade”. U.S. Dep’t of Justice, U.S. Drug Enforcement Agency (Dec. 2000). Source: https://web.archive.org/web/20080910203741/http://www.hawaii.edu/hivandaids/BC_Bud_Growth_Of_The_Canadian_Marijuana_Trade.pdf.

⁸⁹ Id. at 1-2.

⁹⁰ See EBNER, David. “Summer boom for B.C. bud means big-time drug busts for RCMP”. The Globe and Mail (Oct. 12, 2009) (“In the British Columbia marijuana business, this year’s hot, sunny summer has been hailed as the bestever for growing pot outdoors. For the RCMP, using helicopters to search vast and densely forested regions, the bumper weed crop has led to the seizure of tens of thousands of marijuana plants. The latest bust, announced Monday by the Kootenay Boundary detachment of the Royal Canadian Mounted Police, had 14,130 plants taken from 88 sites in the southern central region of B.C. around Nelson, with most of the pot grown on Crown land. The police estimated the street value of the drugs at nearly \$80-million, based on the individual sale of 15.5-million joints. The wholesale value was pegged at roughly \$25-million.”). Source: <https://www.theglobeandmail.com/news/british-columbia/summer-boom-for-bc-bud-means-big-time-drug-bustsfor-rcmp/article1203433/>.

subsequently changed course and passed “The Cannabis Act”, which went into effect in October 2018⁹¹.

That act “legalized and strictly regulated the production, distribution, sale, import and export, and possession of cannabis for adults of legal age”, making the country:

[T]he first major industrialized country to provide legal and regulated access to cannabis for non-medical purposes, signalling a shift away from the reliance on prohibitive measures to deter cannabis use, and the adoption of an evidenceinformed public health and public safety approach.⁹²

It’s almost certain that the legalization of marijuana in Canada led to an uptick in the illicit smuggling of the drug into the United States in the years directly following the passage of The Cannabis Act. Drug legalization efforts in several U.S. states⁹³, though, have also likely diminished the demand in the U.S. market for Canadian marijuana, particularly as the potency of locally grown marijuana here has mushroomed.

With respect to the latter point, as one research paper has explained:

Many people who have voted for legalization thought they were talking about the marijuana of the 1960s to 1980s when the THC content was less than 2%. However, without any clear guidelines or regulations from government officials, the cannabis industry has taken a page from the tobacco and alcohol industries’ play book and developed strains of marijuana and concentrated marijuana products with much higher concentrations of THC, the psychoactive component that causes addiction. The more potent a drug is, the stronger the possibility of

addiction and the more likely the person will continue to purchase and use the product.

. . . .

The primary problem with the current available cannabis in dispensaries in Colorado is that the THC content is not like it used to be. Prior to the 1990s it was less than 2%. In the 1990s it grew to 4%, and between 1995 and 2015 there has been a 212% increase in THC content in the marijuana flower. In 2017 the most popular strains found in dispensaries in Colorado had a range of THC content from 17–28% such as found in the popular strain named “Girl Scout Cookie.” Sadly these plants producing high levels of THC are incapable of producing much

⁹¹ “Taking stock of progress: Cannabis legalization and regulation in Canada”. Government of Canada (modified Oct. 26, 2022). Source: <https://www.canada.ca/en/health-canada/programs/engaging-cannabis-legalizationregulation-canada-taking-stock-progress/document.html>.

⁹² Id.

⁹³ “Recent Developments in Marijuana Law”. Congressional Research Serv. (updated Dec. 6, 2022). Source: <https://crsreports.congress.gov/product/pdf/LSB/LSB10859>.

CBD, the protective component of the plant so these strains have minimal CBD. For example the Girl Scout Cookie strain has only 0.09–0.2% CBD. [Internal footnotes omitted].⁹⁴

The FY 2022 Northern border CBP drug seizure statistics were likely also skewed by major seizures that fiscal year (33,400 pounds) of khat. According to the Alcohol and Drug Foundation:

Khat is a stimulant drug, which means it speeds up the messages between the brain and the body. Chewing khat is part of some social traditions in parts of the Middle East, such as Saudi Arabia and Yemen, and in Eastern Africa, such as Somalia.

The buds and leaves of the khat plant (*Catha edulis*) are chewed for stimulant and euphoric effects, and traditionally have been used for medicinal purposes as well as recreationally. Khat contains cathinone and cathine, which are the chemicals that produce the stimulant effects.⁹⁵

In a July 2022 joint operation, CBP officers and the U.S. Coast Guard seized more than 20,000 pounds of dried khat (estimated street value: \$3.6 million) at the Seattle (Wash.) Maritime Port, which had been shipped from Kenya and marked as “tea”.⁹⁶

Excluding marijuana and khat, CBP at the Northern border has seized 1,300 pounds⁹⁷ of drugs this year, running slightly behind last year’s seizures of 3,500 pounds⁹⁸.

Again, that is likely not as good news as it may appear, for reasons that, again, I will explain below.

OFO seizures of drugs at the Northern ports of entry are well behind last fiscal year’s totals. Through the first five months of FY 2023¹²⁶, CBP officers have seized just 2,000 pounds of drugs, compared to 58,800 pounds in FY 2022¹²⁷, and 81,400 pounds in FY 2021⁹⁹.

⁹⁴ STUYT, Elizabeth. “The Problem with the Current High Potency THC Marijuana from the Perspective of an Addiction Psychiatrist”. *Missouri Medicine* (Nov.-Dec. 2018). Source: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6312155/>.

⁹⁵ “What is khat?” Alcohol and Drug Foundation (updated Nov. 29, 2022). Source: <https://adf.org.au/drugfacts/khat/>.

⁹⁶ “CBP, US Coast Guard Seize more than 10 tons of khat”. U.S. Customs and Border Protection (July 21, 2022). Source: <https://www.cbp.gov/newsroom/local-media-release/cbp-us-coast-guard-seize-more-10-tons-khat>.

⁹⁷ “Drug Seizure Statistics FY2023”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

⁹⁸ Id.

⁹⁹ Id.

Once more, marijuana and khat seizures lead the decline. OFO Northern border seizures of marijuana have declined from nearly 77,000 pounds in FY 2021¹⁰⁰ to 22,400 pounds in FY 2022¹⁰¹, and to 1,500 pounds in FY 2023¹⁰². Khat seizures have declined from 33,400 pounds last fiscal year¹⁰³ to 293 pounds in FY 2023¹³³.

Seizures of other drugs at the Northern border ports have seen similar declines.

Methamphetamine: 546 pounds in FY 2022; 23 pounds in FY 2023¹⁰⁴. Cocaine: 1,000 pounds in FY 2022, two pounds in FY 2023¹⁰⁵. Ketamine: 145 pounds in FY 2022; 18 pounds in FY 2023¹⁰⁶. MDMA/ecstasy: 398 pounds in FY 2022; two pounds in FY 2023¹⁰⁷.

Border Patrol seizures of certain drugs, however, are way up at the Northern border.

Agents have seized 479 pounds of marijuana in the first five months of FY 2023, compared to 759 pounds in all of FY 2022¹³⁸. Agents have also seized nine pounds of cocaine this fiscal year, equaling total cocaine seizures in FY 2022¹⁰⁸, and 45 pounds of MDMA/ecstasy, more than six times as much as in FY 2022 (seven pounds)¹⁰⁹.

The Border Patrol haul of “other” drugs—that is any controlled substance that is not marijuana, meth, cocaine, fentanyl, ketamine, khat, heroin, or ecstasy—are also up significantly, with 943 pounds seized this fiscal year compared to just 15 in FY 2022¹¹⁰.

CBP does not provide a breakdown of what those other drugs are, however, it is common for illicit chemists to slightly change the composition of synthetic drugs to stay ahead of drug scheduling laws¹¹¹, which may explain those seizures. Alternatively, those seizures may involve

¹²⁶ Id.

¹²⁷ Id.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹³³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹³⁸ Id.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ See MUNIZ, Yandiel. “Designer Drugs and the Federal Analog Act”. FIU Law Review (Mar. 11, 2017) (“Traditionally, the Federal Government has classified drugs, such as marijuana and cocaine, as a controlled

“commonly abused prescription drugs”¹¹² that are being smuggled into the United States for sale to illicit users.

I will note, however, that Border Patrol seizures of one drug is way down: meth. In FY 2022, agents seized 470 pounds of meth, compared to just one pound in FY 2023¹¹³.

Given that fact that, as a standing committee of the Canadian House of Commons found in June 2019¹¹⁴, meth “on the streets in Canada mainly comes from Mexico through organized crime, with some domestic production depending upon the region”, those earlier loads were likely stopped on their way into Canada and not from the country.

Human and Drug Smuggling at the Northern Border

The reason that I believe the recent decline in seizures of certain drugs at Northern border ports may not be as positive as these statistics may suggest is that there is not always a clear correlation between the quantity of drugs seized at the border and the quantity being shipped by smugglers, particularly sophisticated TCOs and cartels.

According to the special agent in charge at the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) office in Buffalo, N.Y., ¹¹⁵“traditional organized crime, Asian organized crime, East Indian organized crime, [and] outlaw motorcycle gangs¹¹⁶” are involved in the illegal transshipment of drugs across the Northern border, and as noted, reports have indicated that Mexican cartel members are present in Canada, as well.

It is reasonable to conclude, if not likely, that such organized criminal groups are increasingly exploiting the broad expanse of the Northern border and overworked Border Patrol agents and local and state police there to move drugs from one side of the U.S.-Canadian boundary to the other between the ports, not through those ports—where the likelihood of apprehension is much higher.

¹¹² See “Commonly Abused Prescription Drugs”. Nat’l Inst. Of Health (revised Oct. 2011). Source: https://nida.nih.gov/sites/default/files/rx_drugs_placemat_508c_10052011.pdf.

¹¹³ “Drug Seizure Statistics FY2023”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

¹¹⁴ “Impacts of Methamphetamine Abuse in Canada”, at p.18. House of Commons, Standing Committee on Health (Jun. 2019). Source: <https://www.ourcommons.ca/Content/Committee/421/HESA/Reports/RP10533589/hesarp26/hesarp26-e.pdf>.

¹¹⁵ BARR, Luke. “Drug seizures along Canadian border up 1,000%, CBP says”. ABC News (Sep. 16, 2020). Source: <https://abcnews.go.com/Politics/drug-seizures-canadian-border-1000-cbp/story?id=73049477>.

¹¹⁶ See LEJTENYI, Patrick. “How the Hells Angels Conquered Canada”. Vice (Oct. 27, 2016) (“The Hells Angels' path to eventually dominating the Canadian crime scene was a bloody one, but also one that was carefully thought out and executed. The biker gang has maintained that dominance through a savvy combination of diplomacy, business sense, marketing, and bloodshed.”). Source: <https://www.vice.com/en/article/bn3vng/how-the-hells-angelsconquered-canada>.

substance. Enforcement by prosecutors was relatively easy since the composition of the drug was known. Today, chemists are manufacturing synthetic drugs that have similar effects to controlled substances, but are able to escape prosecution since the synthetic drug, a.k.a. designer drug, has a slightly different chemical composition than its controlled counterpart.”). Source: <https://law.fiu.edu/2017/03/11/designer-drugs-federal-analog-act/>.

CBP officers at the ports have several advantages compared to Border Patrol agents in the field, and thus are better able to identify and seize drug loads.¹¹⁷ For example, all traffic—cars, trucks, and pedestrians-- must stop for inspection at the ports, while smugglers crossing the border illegally between ports of entry do so to avoid detection and apprehension by agents.¹¹⁸

CBP officers also have tools like X-ray machines that can unobtrusively examine entire vehicles and drug-sniffing dogs trained to “scent” on contraband that are unavailable to most Border Patrol agents in the field.¹¹⁹

The increase in Border Patrol seizures of MDMA/ecstasy, marijuana, cocaine, and “other” drugs, coupled with the decline in the seizures of those drugs at the ports, suggests that organized and sophisticated drug traffickers, in fact, have shifted their smuggling operations at the Northern border away from ports to the largely open expanses between those ports, with cocaine headed north to the Canadian market and other drugs flowing south into the U.S. market.

Sophisticated human smuggling efforts across the Northern border are also occurring, best exemplified by one particularly horrendous case that ended in tragedy.

On January 19, 2022, Canadian authorities near the U.S. border in Emerson, Manitoba found the bodies of four Indian nationals: Jagdish Patel, aged 39; Vaishaliben Patel, his wife, aged 37; the Patels’ daughter, Vihangi, aged 11-year-old; and their son, Dharmik, who was three years old.¹²⁰ They had frozen to death attempting to cross illegally into the United States.

The family had come from Dingucha, a village in the Indian state of Gujarat, and entered Canada at Toronto more than a week prior to their deaths, on visitor visas.¹²¹ From there, they traveled west, to Manitoba, arriving in the border town of Emerson sometime around January 18.¹²²

They and other would-be migrants were dropped off near the border to begin the trek into the United States when they became separated from the rest. As the National Post reported:

¹¹⁷ ARTHUR, Andrew. “Border Patrol Keeps Finding the Fentanyl that Supposedly Only Comes Through the Ports”. Center for Immigration Studies (Oct. 28, 2022). Source: <https://cis.org/Arthur/Border-Patrol-Keeps-FindingFentanyl-Supposedly-Only-Comes-Through-Ports>.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ HOBSON, Brittany. “One year after death of Indian migrants at border, U.S. still sees illegal crossings”. National Post (Jan 19, 2023). Source: <https://nationalpost.com/news/one-year-after-death-of-indian-migrants-at-border-us-still-sees-illegal-crossings>.

¹²¹ HENDRICH, Holly and GAGDEKAR, Roxy. “Family who died in freezing cold by US-Canada border identified”. BBC News (Jan. 28, 2022). Source: <https://www.bbc.com/news/world-us-canada-60162500>.

¹²² Id.

Investigators believe a human smuggling network was behind the family's journey to Canada from a village in the state of Gujarat in western India, as well as the border-crossing attempt.

.....

Border patrol agents stopped a van with a driver and two Indian nationals just south of the border. . . . Agents later spotted five others from India walking in the snow. They told officers that they had been walking for more than 11 hours in the cold and that four others had become separated from the group overnight.¹²³

Border Patrol agents thereafter coordinated with officers from the Royal Canadian Mounted Police (RCMP), and RCMP officers found the bodies of the Patel family about three hours later.¹²⁴ It was around 30 degrees below zero in the area that night.

Steve Shand, a 47-year-old U.S. citizen from Florida, has been charged in federal court in Minnesota with human smuggling in connection with the case¹²⁵, and an investigation into the incident is also ongoing in India.¹²⁶ As the Times of India reports: “Dingucha village has several agents who facilitate the illegal journey to the US.”

A similar but more recent case involves Haitian national Fritznel Richard, who died of hypothermia south of Montreal in early January during an attempted illegal entry into the United States.¹²⁷

Richard had originally left Haiti and traveled with his wife and son to Brazil, and then made a week-long perilous journey up through the infamous Darién Gap and, apparently, into the United States.¹²⁸

¹²³ HOBSON, Brittany. “One year after death of Indian migrants at border, U.S. still sees illegal crossings”. National Post (Jan 19, 2023). Source: <https://nationalpost.com/news/one-year-after-death-of-indian-migrants-at-border-us-still-sees-illegal-crossings>.

¹²⁴ Id.

¹²⁵ “Press Release, Florida Man Arrested at U.S./Canada Border, Charged with Human Smuggling”. U.S. Attorney's Office, District of Minnesota (Jan. 20, 2022). Source: <https://www.justice.gov/usao-mn/pr/florida-man-arrested-us-canada-border-charged-human-smuggling-0>.

¹²⁶ CHAUHAN, Ashish. “Another family member of Jagdish Patel from Gujarat under scanner”. Times of India (Feb. 27, 2023). Source: <https://timesofindia.indiatimes.com/city/ahmedabad/another-family-member-of-jagdish-patel-under-scanner/articleshow/98261358.cms>.

¹²⁷ STEVENSON, Verity. “Fritznel Richard, who died near Roxham Road border crossing, made final phone call to his wife”. CBC News (Jan. 11, 2023). Source: <https://www.cbc.ca/news/canada/montreal/fritznel-richard-wife-phonecall-1.6708299>.

¹²⁸ STEVENSON, Verity. “The life and death of Fritznel Richard: What happens after Roxham Road”. CBC News (Feb.

As CBC News reported: “Richard had heard Canada was more welcoming for Haitians, that there were less chances of being deported to Haiti, that it would be easier to obtain residency as an asylum seeker than in the U.S.”, and so the family kept traveling north, settling in Montreal.¹²⁹

Their Canadian work permits were delayed, and government aid did not provide sufficient sustenance for the family, and so Richard’s wife and son returned to the United States in October with the assistance of a smuggler, ending up in Florida.¹³⁰

Missing his family, and with his asylum case stalled, Richard hired the same smuggler a few months later “to take him to the border near Roxham Road, the popular irregular crossing point between New York State and Quebec’s Montérégie region south of Montreal, where he”, his wife, and son had “first made their way into Canada”.¹³¹

Richard apparently attempted to reschedule the trip in the face of unusually inclement weather, but the smuggler refused. As his wife told CBC News: “This is what this person does . . . It’s a job for them.”¹⁶³

The predatory nature of smugglers is a common refrain on both the Southwestern and Northern borders, and worldwide. As Anthony Good, then-Border Patrol sector chief in Grand Forks, explained in February:

You know, the smugglers do not care about their lives at all. You know, all they care about is the money. Somebody that might smuggle human beings who are also on their way back, might smuggle guns into Canada or smuggle drugs with these people in the United States . . .¹³²

U.S.-Canadian Border Relations

The boundary between the United States and Canada is often described as the “world’s longest undefended border”¹³³, and with good reason, particularly as relates to immigration. As the Canadian government notes:

17, 2023). Source: <https://www.cbc.ca/news/canada/montreal/the-life-of-fritznel-richard-1.6750509>.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹⁶³ Id.

¹³² LAURITSEN, John. “Illegal crossings increasing at U.S.-Canada border despite dangerous, deadly conditions”. CBS News Minnesota (Feb. 16, 2023). Source: <https://www.cbsnews.com/minnesota/news/illegal-crossings-increasing-at-u-s-canada-border/>.

¹³³ “World’s Longest Undefended Border”. Parli. The Dictionary of Canadian Politics (undated). Source: <https://parli.ca/worlds-longest-undefended-border/>.

It is estimated that around 400,000 people crossed the Canada-United States border every day (pre-pandemic) and that there are about 800,000 Canadian citizens living in the United States. There are many Canadian First Nations residents and U.S. Native American Tribes whose culture spans the border.¹³⁴

Under the U.S.-Canadian December 2011 bilateral “Beyond the Border Plan”, the two countries share biographic and biometric information for visa applicants as well as “no-fly” lists, and engage in other mutually advantageous immigration-related endeavors.¹³⁵

Most significantly, however, Canada is the only country with which the United States currently shares an agreement for dealing with would-be asylum applicants. That “Canada-U.S. Safe Third Country Agreement”¹³⁶ has been in effect since late December 2004.

Pursuant to that agreement, aliens present in the United States or Canada must first apply for asylum in that country.¹³⁷ U.S. nationals can still seek asylum in Canada, of course, and viceversa.

Notably, though, as the Congressional Research Service¹³⁸ explains, the agreement applies only to aliens “who present themselves at ports of entry on the U.S.-Canada land border and to aliens in transit during removal from the U.S. or Canada” and does not apply to illegal entrants to either country. That was the rule up until recently, as least, as I will explain below.

One other notable exception applies to aliens with family ties in either the United States or Canada.¹³⁹

¹³⁴ “Canada-United States relations”. Government of Canada (updated Mar. 22, 2023). Source: <https://www.international.gc.ca/country-pays/us-cu/relations.aspx?lang=eng>.

¹³⁵ “Beyond the Border U.S. Fact Sheet”. U.S. Dep’t of Homeland Security (Jan. 2017). Source: <https://www.dhs.gov/sites/default/files/publications/2017%201%2019%20BTB%20Fact%20Sheet.pdf>.

¹³⁶ “Canada-U.S. Safe Third Country Agreement”. Government of Canada (modified Dec. 8, 2022). Source: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operationalinstructions-agreements/agreements/safe-third-country-agreement.html>.

¹³⁷ Id.

¹³⁸ “Safe Third Country Agreements with Northern Triangle Countries: Background and Legal Issues”, at p.2. Congressional Resource Service (Jan. 30, 2020). Source: <https://crsreports.congress.gov/product/pdf/LSB/LSB10402>.

¹³⁹ “Canada-U.S. Safe Third Country Agreement”. Government of Canada (modified Dec. 8, 2022). Source: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operationalinstructions-agreements/agreements/safe-third-country-agreement.html>.

If an asylum applicant at a U.S. port of entry who hasn't applied for protection in Canada has a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew in the United States with asylee, refugee, or other legal status, or who is applying for asylum, that alien can seek an exception under the agreement here.¹⁴⁰

The third-country agreement traditionally has favored Canada, which has rather stringent immigration laws (but eagerly accepts immigrants who follow its rules) and natural advantages over the United States in enforcing those laws. Or, as the Council on Foreign Relations puts it:

Canada's geography—bordered by three oceans and the United States, which is itself a magnet for immigrants—has helped Ottawa limit flows of undocumented people. Its highly regulated immigration system, including some of the world's strictest visitor-visa requirements, is designed to further curb this phenomenon.¹⁴¹

The exception to the third-country agreement for aliens entering Canada illegally has, however, placed strains on the Canadian federal government, which of late has seen a surge in asylum claimants since the U.S. Southwest border crisis began.

One flashpoint has been the Roxham Road crossing, about 30 miles south of Montreal, that Richard was attempting to reach when he died in January.¹⁴²

CBC News describes Roxham road as “a well-travelled unofficial border crossing for asylum seekers hoping to enter Canada”, explaining:

Quebec Premier François Legault recently wrote a letter to Prime Minister Justin Trudeau asking him to close Roxham Road to asylum-seekers. Thousands of them have crossed into Canada from the United States at Roxham in recent years.

Legault claimed that the influx of people waiting to have their claims heard has put heavy pressure on the province's public services. In a similar letter published Tuesday in the Globe and Mail, Legault asked other provinces to help.

Conservative Leader Pierre Poilievre also has called on Trudeau to close Roxham Road. Trudeau himself said Wednesday the government is working on shutting down the irregular border crossing. But it's not at all clear how Ottawa could do that.

¹⁴⁰ Id.

¹⁴¹ CHEATHAM, Amelia and ROY, Diana. “What Is Canada's Immigration Policy?”. Council on Foreign Relations (updated Mar. 7, 2023). Source: <https://www.cfr.org/backgrounder/what-canadas-immigration-policy#chaptertitle-0-10>.

¹⁴² MAJOR, Darren. “Roxham: The little country road that became a big political headache for the Trudeau government”. CBC News (Feb. 25, 2023). Source: <https://www.cbc.ca/news/politics/roxham-road-explainer1.6756753>.

Almost 40,000 people used the “unofficial” Roxham Road border crossing to enter Canada last year.¹⁴³

The Trudeau government appears to be on the verge of “shutting down the irregular border crossings” at Roxham Road and elsewhere, however, to its advantage and the likely detriment of the United States.

On March 23¹⁴⁴, the New York Times reported that the two countries had reached a deal, in advance of President Biden’s first visit to Ottawa, amending the Canada-U.S. Safe Third Country Agreement to apply to migrants entering either country from the other illegally as well as legally.

As the Council on Foreign Relations explained, it is extremely difficult for migrants to enter Canada illegally from any other country other than the United States, and thus all the benefits in this agreement will flow to the Canadian side of the border. While irregular crossings to Canada had provided some small measure of relief to the overwhelmed U.S. asylum system, that relief is now, assuming the Times’ reporting is correct, gone.

To give you an idea how effectively its geographic advantages have protected Canada from illegal entrants to this point, or how different illegal immigration has been as a problem in that nation compared to in the United States, consider the following, from The Guardian this month:

“Asylum seekers on our borders is not something that Canada typically deals with,” said Abdulla Daoud, executive director of the Refugee Centre in Montreal. “This is in many ways a new issue. And while there’s been an uptick, there’s no denying that, we’ve seen that Canada’s immigration infrastructure can handle an increase in population – but the asylum system wasn’t ever built to accommodate this sort of issue.”¹⁴⁵

With that in mind, and to demonstrate how overwhelmed the U.S. asylum system is compared to the asylum system in Canada, as of the end of December 2022, the Canadian government had a

¹⁴³ Cecco, Leyland. “Trudeau-Biden talks to tackle asylum seekers surge at migration hotspot”. The Guardian (Mar. 22, 2023). Source: <https://www.theguardian.com/world/2023/mar/22/canada-asylum-seekers-biden-talksimmigration>.

¹⁴⁴ SHEAR, Michael D. and AUSTEN, Ian. “U.S. and Canada Reach an Agreement on Turning Away Asylum Seekers” (Mar. 23, 2023). Source: https://www.nytimes.com/2023/03/23/us/politics/us-canada-asylumseekers.html?campaign_id=190&emc=edit_ufn_20230323&instance_id=88494&nl=from-thetimes®i_id=80398174&segment_id=128590&te=1&user_id=605a5facbf0fe857251b64502c28f590.

¹⁴⁵ Cecco, Leyland. “Trudeau-Biden talks to tackle asylum seekers surge at migration hotspot”. The Guardian (Mar. 22, 2023). Source: <https://www.theguardian.com/world/2023/mar/22/canada-asylum-seekers-biden-talksimmigration>.

backlog of 70,223 pending asylum claims.¹⁴⁶ By comparison, there were nearly 1.566 million asylum claims pending in the United States at that time¹⁴⁷-- 22 times as many claims in a country with roughly 8.65 times the population.

In his deal with Biden, Trudeau has, apparently, also “agreed to provide a new, legal refugee program for 15,000 migrants who are fleeing violence, persecution and economic devastation in South and Central America”, which the Times asserts will “lessen[] the pressure of illegal crossings into the United States from Mexico”.¹⁴⁸

There are a lot of “unknowns” involved (including whether those 15,000 migrants would have otherwise illegally entered the United States) but given that more than 30,000 migrants from the Central American countries of El Salvador, Guatemala, Honduras, and Nicaragua were apprehended crossing the Southwest border illegally in the month of February¹⁴⁹ alone, this concession won’t do much to “lessen the pressure” on U.S. borders.

Cross-Border Threats

The most significant known threat posed by the dearth of law-enforcement resources and staffing at the Northern border is the flow of illicit drugs into the United States, in much the same way that illegal drug, gun, and migrant smuggling poses a threat to Canada.

The much bigger problem is “unknown” threats, which cannot be anticipated and addressed, such as national-security threats posed by terrorists and other hostile actors. Both countries have experienced such national-security threats from third-country aliens entering from the other in the not-so-distant past.

Ahmed Ressam

The most notable such threat was posed by Ahmed Ressam, a 32-year-old Algerian national who was apprehended by U.S. Customs officers entering the United States at Port Angeles, Wash., in December 1999.¹⁵⁰

¹⁴⁶ “Claims by Country of Alleged Persecution – 2022”. Immigration and Refugee Board Canada (modified Mar. 1, 2023). Source: <https://www.irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat2022.aspx>.

¹⁴⁷ “A Sober Assessment of the Growing U.S. Asylum Backlog”. TRAC Immigration (Dec. 22, 2022). Source: <https://trac.syr.edu/reports/705/>.

¹⁴⁸ SHEAR, Michael D. and AUSTEN, Ian. “U.S. and Canada Reach an Agreement on Turning Away Asylum Seekers” (Mar. 23, 2023). Source: https://www.nytimes.com/2023/03/23/us/politics/us-canada-asylumseekers.html?campaign_id=190&emc=edit_ufn_20230323&instance_id=88494&nl=from-thetimes®i_id=80398174&segment_id=128590&te=1&user_id=605a5facbf0fe857251b64502c28f590.

¹⁴⁹ “Nationwide Encounters”. U.S. Customs and Border Protection (modified Mar. 10, 2023). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

¹⁵⁰ “Millennium Plot/Ahmed Ressam”. U.S. Federal Bureau of Investigation (undated). Source: <https://www.fbi.gov/history/famous-cases/millennium-plot-ahmed-ressam>.

As the Federal Bureau of Investigation (FBI) later explained, an ensuing search of Ressam’s car “revealed more than 100 pounds of white powder—later determined to be urea sulfate—as well as approximately eight ounces of a highly volatile nitroglycerine mixture and fusing systems components”, which he intended to use to bomb Los Angeles International Airport (LAX) on the millennium, Dec. 31, 1999.¹⁵¹

Ressam had initially traveled from France to Montreal in February 1994, using a photo substituted French passport.¹⁵² He was stopped at the airport and requested asylum, claiming that he had been tortured by Algerian authorities who had wrongly accused him of terrorist activities.¹⁵³

Canadian authorities released him pending a hearing on his claim, and he lived for four years in Montreal. The apartment building where Ressam took up residence there was “later identified by Canadian and international police as the Montreal headquarters of a terrorist cell connected to the Osama bin Laden network, and, more specifically, to an Algerian terrorist organization called the Armed Islamic Group, or GIA.”¹⁵⁴

Ressam missed a scheduled June 1995 hearing on his asylum claim, and a warrant was issued for his arrest. He was not deported, however, and at some point, used a falsified baptismal certificate to obtain a Canadian passport in the name of “Benni Antoine Noris”.¹⁵⁵

On March 17, 1998, Ressam left Canada and traveled to Peshawar, Pakistan, then onward that April to Afghanistan, where he received terrorist training at “camps funded and administered by Osama bin Laden”.¹⁵⁶

While in Afghanistan, Ressam claimed, he began his planning for an attack on the United States based out of Canada.¹⁵⁷

¹⁵¹ Id.

¹⁵² “Ahmed Ressam’s Millennium Plot”. Frontline (undated). Source: <https://www.pbs.org/wgbh/pages/frontline/shows/trail/inside/cron.html>.

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ Id.

Ressam thereafter left Afghanistan and returned to Canada, flying from Pakistan through LAX, and landing in Vancouver, where he presented his fraudulent Canadian passport on February 7, 1999, and was admitted.¹⁵⁸

As the Seattle Times asserted in the summer of 2002: “The ease with which Ressam re-entered Canada after attending terror-training camp illustrates why U.S. counterterrorism officials sometimes deride their neighbor to the north as ‘the aircraft carrier’ — meaning terrorists can land and take off from there with impunity.”¹⁹¹

Ressam went back to Montreal in April 1999, but returned to Vancouver on November 17, 1999, where he rented a car and checked into a local motel. It was in this motel room where he and an accomplice, Abdelmajid Dahoumane, (a friend from Montreal), assembled the bomb.¹⁵⁹

Dahoumane returned to Montreal, and on December 14, 1999, Ressam boarded the ferry MV Coho¹⁶⁰ in Victoria, B.C. on his way to Port Angeles, with the explosives in the spare tire compartment of the rental car.¹⁶¹

After landing at Port Angeles, he presented the fraudulently obtained Canadian passport in the name of Benni Noris to the U.S. Customs inspector. The inspector found him to be “fidgeting, jittery, sweating”, and she commenced a search, during which the explosives were found and Ressam arrested.¹⁶²

In April 2001, Ressam was convicted on nine counts in connection with the attempted bombing of LAX and was re-sentenced (for the third time) to 37 years in prison in October 2012.¹⁶³

Gazi Ibrahim Abu Mezer

¹⁵⁸ BERNTON, Hal, CARTER, Mike, HEATH, David, and NEFF, James. “A Bunch of Guys”. Seattle Times (June 23 - July 7, 2002). Source: <http://special.seattletimes.com/o/news/nation-world/terroristwithin/chapter9.html>. ¹⁹¹ Id. Note that the Canadian government has improved its national-security apparatus and information-sharing protocols in the interim, and in particular since the September 11th attacks. See fn. 167.

¹⁵⁹ Id.

¹⁶⁰ Bell, Jeff. “Victoria focus of 1999 terrorist plot involving al-Qaeda-trained Ahmed Ressam”. Times Colonist (Jul 2, 2013). Source: <https://www.timescolonist.com/local-news/victoria-focus-of-1999-terrorist-plot-involving-alqaeda-trained-ahmed-ressam-4596668>.

¹⁶¹ BERNTON, Hal, CARTER, Mike, HEATH, David, and NEFF, James. “A Bunch of Guys”. Seattle Times (June 23 - July 7, 2002). Source: <http://special.seattletimes.com/o/news/nation-world/terroristwithin/chapter12.html>.

¹⁶² Id.

¹⁶³ Millennium Plot/Ahmed Ressam”. U.S. Federal Bureau of Investigation (undated). Source: <https://www.fbi.gov/history/famous-cases/millennium-plot-ahmed-ressam>.

Another would-be terrorist who entered the United States from Canada was Gazi Ibrahim Abu Mezer, born in 1973 in the Israeli West Bank town of Hebron.¹⁶⁴

In May 1993, Mezer applied for a Canadian T-1 student visa, and after receiving an Israeli passport (showing Jordanian nationality), was issued the visa. On September 14, 1993, Mezer entered Canada.¹⁶⁵

He almost immediately applied for a nonimmigrant visa from the U.S. consulate (which was denied), later filing for asylum in Canada in November 1993.¹⁹⁹

Mezer thereafter was apprehended twice by agents from the Border Patrol's Blaine Sector attempting to enter the United States illegally in June 1996¹⁶⁶; on each occasion he was allowed to return to Canada voluntarily.¹⁶⁷

Following a third illegal entry and apprehension miles south of the border in Blaine Sector in January 1997, Mezer was taken into custody, largely because of his prior two apprehensions and because he was suspected by agents of being an alien smuggler.

At the end of his first deportation proceeding, Mezer was ordered deported to Canada, but after Canada refused to take him back his case was reopened, and he was allowed to apply for asylum. Mezer was released on a \$5,000 bond in February 1997, and traveled to New York.²⁰²

In its report, "Terrorism in the United States 1997"¹⁶⁸, the FBI explained what happened thereafter:

On July 31, 1997, a cooperating witness informed the New York City Police Department (NYPD) that a recent Palestinian immigrant to the United States was planning to rig a bomb to a trip wire on the "B-line" of the subway. The NYPD conducted a raid on an apartment in Brooklyn, New York. Two improvised explosive devices consisting of five pipe bombs were recovered by the NYPD bomb squad.

Upon entering the apartment, NYPD officers confronted two subjects: Gazi Ibrahim Abu Mezer and Lafi Khalil. Both men were shot by the officers as they

¹⁶⁴ "Bombs in Brooklyn: How the Two Illegal Aliens Arrested for Plotting to Bomb the New York Subway Entered and Remained in the United States". U.S. Dep't of Justice, Office of the Inspector General (Mar. 1998). Source: <https://oig.justice.gov/sites/default/files/archive/special/9803/index.htm>.

¹⁶⁵ Id.

¹⁹⁹ Id.

¹⁶⁶ Id.

¹⁶⁷ Id.

²⁰² Id.

¹⁶⁸ "Terrorism in the United States 1997", at p.5. U.S. Dep't of Justice, Federal Bureau of Investigation (1997). Source: https://www.fbi.gov/file-repository/stats-services-publications-terror_97.pdf.

tried to reach switches on the pipe bombs; they were subsequently taken to an area hospital.

In 1999, Mezer was sentenced to life in prison for his role in the bombing plot.¹⁶⁹

Abdulahi Hasan Sharif

Not all third-country aliens posing a national-security threat are on the U.S. side of the Northern border.

Abdulahi Hasan Sharif, a Somali national, was born in 1997 in Mogadishu.¹⁷⁰ He left Somalia in approximately 2008, making his way through Kenya, Tanzania, Zambia, Namibia, and Angola, before eventually joining a group of migrants headed to Brazil.¹⁷¹

From there, he headed to Mexico, arriving on foot at the San Ysidro (Calif.) port of entry in July 2011.¹⁷² He had no entry documents, and was handed over thereafter to ICE, which detained him at the Otay Mesa Detention Center in San Diego.¹⁷³

On September 22, 2011, Sharif was ordered removed to Somalia, and he waived his right to appeal.¹⁷⁴ ICE was unable to remove him to Somalia, however, and so he was released on an order of supervision and directed to appear at ICE's San Diego office in January 2012.²¹⁰

Sharif never showed up, having made his way to Buffalo, N.Y. and crossing into Canada at the Fort Erie, Ontario port of entry in early January 2012.¹⁷⁵ He applied for, and was granted, asylum by the Canadian government thereafter.¹⁷⁶

After spending approximately one year in Ontario, Sharif moved to Edmonton, Alberta, where he worked as a laborer¹⁷⁷.

He first came to the attention of the RCMP there in 2015, when officers investigated him for

¹⁶⁹ TRAN, Mark. "Brooklyn judge jails Palestinian for life for plot to bomb subway". The Guardian (Mar. 2, 1999). Source: <https://www.theguardian.com/world/1999/mar/03/marktran>.

¹⁷⁰ WAKEFIELD, Jonny. "Everything we know about the man charged in Edmonton's truck attack from the woman who knows him best". Edmonton Journal (Sep. 28, 2018). Source: <https://edmontonjournal.com/news/crime/who-is-abdulahi-hasan-sharif-one-year-later-everything-we-knowabout-the-alleged-edmonton-attacker>.

¹⁷¹ Id.

¹⁷² Id.

¹⁷³ Id.

¹⁷⁴ Id.

²¹⁰ Id.

¹⁷⁵ Id.

¹⁷⁶ Id.

¹⁷⁷ Id.

“espousing extremist ideologies”, an investigation that was dropped for lack of evidence.¹⁷⁸

In September 2017, Sharif struck Constable Mike Chernyk-- who had been directing traffic outside an Edmonton Eskimos football game-- with a car, and then stabbed him several times in the head.¹⁷⁹

Sharif ran away, and a few hours later was driving a U-Haul van when he was pulled over at a police checkpoint. He sped off and thereafter ran down four pedestrians. After he was arrested, an ISIS flag was found in his car.¹⁸⁰

In December 2019, Sharif was sentenced to 28 years—18 years for stabbing Constable Chernyk, and 10 years for running down the pedestrians.²¹⁷

Deterrence

Whether you realize it or not, the reason that there is a burgeoning crisis at the Northern border is simple: Joe Biden is the first president in history to reject the deterrence of illegal migrants as a border policy.

Nowhere was this clearer than in an exchange between DHS Secretary Alejandro Mayorkas and host Bret Baier on the May 1, 2022, edition of Fox News Sunday.¹⁸¹ Baier asked Mayorkas: “Is it the objective of the Biden administration to reduce, sharply reduce, the total number of illegal immigrants coming across the southern border? Is that the objective?”¹⁸²

To which Mayorkas replied: “It is the objective of the Biden administration to make sure that we have safe, legal, and legal pathways to individuals to be able to access our legal system.”¹⁸³

¹⁷⁸ Id.

¹⁷⁹ DERWORIZ, Colette. “Abdulahi Sharif sentenced to 28 years for trying to kill Edmonton police officer, pedestrians”. Global News (Dec. 13, 2019). Source: <https://globalnews.ca/news/6295290/sharif-sentencededmonton-vehicle-uhaul-police-officer-attack/>.

¹⁸⁰ Id.

²¹⁷ Id.

¹⁸¹ FOX NEWS SUNDAY (2022). “Sec. Mayorkas: 'I'm looking forward to testifying before the US Senate'.” Fox News (May 1, 2022). Source: <https://www.foxnews.com/video/6305481541112>.

¹⁸² Id.

¹⁸³ Id.

By “pathways . . . to access our legal system”, Mayorkas means to “apply for asylum”, and in fact the Biden administration has treated all illegal entrants as “asylum seekers”, regardless of the strength of their claims or even whether they come seeking asylum at all.¹⁸⁴

In line with the administration’s shift from reducing the total number illegal immigrants coming across the border to providing all migrants with “safe, legal, and legal pathways . . . to access our legal system”, the president has largely abandoned the primary tools Congress has given the executive branch to deter illegal entrants—detention and prosecution.

Illegal entry is both a civil violation (subjecting the offender to removal) and a criminal offense, punishable as a misdemeanor carrying a sentence of up to six-months and a fine for the first

offense and a felony subject to up to two years’ imprisonment and a fine for subsequent offenses under section 275 of the INA.²²²

Criminal prosecutions under this provision peaked in 2018 and 2019 under the Trump administration and then plummeted with the onset of the Covid-19 pandemic, which limited available detention space.¹⁸⁵ Even as illegal entries surged under the Biden administration and pandemic-related restrictions on detention have eased, however, the number of prosecutions for improper entry have remained low.¹⁸⁶

The same is true of the number of illegal migrants who have been detained under the Biden administration.

Since President Biden took office, Border Patrol at the Southwest border has set new yearly records for migrant apprehensions, first in FY 2021, as agents apprehended nearly 1.6 million illegal migrants¹⁸⁷, and again in FY 2022, as apprehensions exceeded 2.2 million.¹⁸⁸

¹⁸⁴ Arthur, Andrew (2022). “Biden’s Plan to Enable Everyone in the World to Apply for Asylum in the U.S.” Center for Immigration Studies, 11 May 2022. Source: <https://cis.org/Arthur/Bidens-Plan-Enable-Everyone-World-ApplyAsylum-US>.

¹⁸⁵ “Major Swings in Immigration Criminal Prosecutions during Trump Administration.” TRAC Immigration, 18 Dec. 2020. Source: <https://trac.syr.edu/immigration/reports/633/>.

¹⁸⁶ “Criminal Immigration Referrals Up from the Border Patrol.” TRAC Immigration, 7 Jul. 2022. Source: <https://trac.syr.edu/immigration/reports/688/>.

¹⁸⁷ ARTHUR, Andrew (2021). “All-Time Record for Southwest Border Apprehensions in FY 2021.” Center for Immigration Studies, 22 OCT. 2021. Source: <https://cis.org/Arthur/AllTime-Record-Southwest-BorderApprehensions-FY-2021>.

¹⁸⁸ ARTHUR, Andrew (2022). “Late Night CBP ‘News Dump’ Reveals the Border’s in Freefall.” Center for Immigration Studies, 24 OCT. 2022. Source: <https://cis.org/Arthur/Late-Night-CBP-News-Dump-Reveals-Borders-Freefall>.

Despite that historically unprecedented surge in illegal migrants, however, President Biden asked Congress to cut the number of daily beds DHS has available for immigration detainees, to 25,000 from 34,000, in his FY 2023 budget request.¹⁸⁹

Instead of detaining those illegal migrants—as, again, Congress has mandated—Biden has released an estimated 1.8 million of them into the United States since taking office.²²⁸

In his opinion in Florida²²⁹, Judge Wetherell concluded that the Biden migrant release policies have encouraged even greater numbers of migrants to enter the United States illegally. More saliently, as he also found in his March 8 order,

Collectively, [the Biden administration’s migrant release policies] were akin to posting a flashing “Come In, We’re Open” sign on the southern border. The unprecedented “surge” of aliens that started arriving at the Southwest Border almost immediately after President Biden took office and that has continued

²²² Section 275 of the Immigration and Nationality Act (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8section1325&num=0&edition=prelim#:~:text=Any%20individual%20who%20knowingly%20establishes,%2C%20%C2%A7275%2C%2066%20Stat.>

unabated over the past two years was a predictable consequence of these actions. Indeed, [U.S. Border Patrol] Chief [Raul L.] Ortiz credibly testified based on his experience that there have been increases in migration “when there are no consequences” and migrant populations believe they will be released into the country. [Footnote omitted].¹⁹⁰

Consequently, Border Patrol agents at the Southwest border are increasingly too overwhelmed apprehending, transporting, processing, caring for, and – all too often—releasing illegal migrants at the Southwest border to perform their other duties, such as keeping terrorists and drugs out of the United States.

That has prompted Border Patrol to reassign hundreds of agents from the Northern border to assist their colleagues at the Southwest border, leaving the Northern border increasingly understaffed and undefended.

¹⁸⁹ SULLIVAN, Eileen (2022). “Biden to Ask Congress for 9,000 Fewer Immigration Detention Beds.” New York Times, 25 Mar. 2022. Source: <https://www.nytimes.com/2022/03/25/us/politics/biden-immigration-detention-beds.html> ²²⁸ ARTHUR, Andrew (2023). “The ‘Unknown Unknowns’ of Biden’s Latest Border Plan.” Center for Immigration Studies, 27 Jan. 2023. Source: <https://cis.org/Arthur/Unknown-Unknowns-Bidens-Latest-Border-Plan>. ²²⁹ See fn. 41.

¹⁹⁰ Florida v. U.S., ___ F. Supp. 3d ___, No. 3:21-cv-1066-TKW-ZCB, slip op. at pp. 18-19 (N.D. Fla. Mar. 8, 2023). Source: [http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CPQPAB/\\$file/final+order.pdf](http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CPQPAB/$file/final+order.pdf).

Local and state police in the Northern border states cannot be expected to pick up the slack. They, too, are understaffed, but more importantly, most lack the skills that Border Patrol agents rely upon daily.

That enforcement void at the Northern border has been exploited by opportunistic criminals—drug and human smugglers. They care little about the lives and well-being of those aliens they are transporting, or the thousands of Americans and Canadians whose lives they adversely impact with their drugs, or firearms crimes in Canada. They are strictly in it for the money.

Moreover, a significant number of the illegal migrants released into the United States at the Southwest border have been drawn by the more generous benefits available under the Canadian asylum system to enter that country illegally, which has created a crisis for the federal and provincial governments on the other side of the Northern border.

The Trudeau administration appears to have resolved that issue through agreement with the Biden administration—to its advantage and to the detriment of the migrants seeking to go to Canada as well as U.S. interests.

In amending the safe-third country agreement to allow Canada to return illegal asylum-seeking illegal migrants, the Biden administration has essentially admitted that it created a hazard at the Northern border for Canada, which it now expects the American people to clean up and deal with.

This crisis at the Southwestern and Northern borders will continue until the Biden administration follows the example set by all prior administrations and begins deterring migrants from entering the United States illegally—which means detaining them, as, again, the law already requires.¹⁹¹

As Judge Wetherell held after considering all the evidence in Florida: “There is nothing inherently inhumane or cruel about detaining aliens pending completion of their immigration proceedings. The CBP and ICE witnesses admitted as much in their testimony and there is no contrary evidence in the record.”¹⁹²

Conclusion

In its final report, the 9/11 Commission noted, ruefully:

In the decade before September 11, 2001, border security — encompassing travel, entry, and immigration — was not seen as a national security matter. Public

¹⁹¹ ARTHUR, Andrew. “DHS Can’t Just Release Illegal Migrants at the Border”. Center for Immigration Studies (Oct.

22, 2021). Source: <https://cis.org/Arthur/DHS-Cant-Just-Release-Illegal-Migrants-Border>. See also Florida v. U.S., ___ F. Supp. 3d ___, No. 3:21-cv-1066-TKW-ZCB, slip op. at p. 75 (N.D. Fla. Mar. 8, 2023) (“Notwithstanding the

¹⁹² Florida v. U.S., ___ F. Supp. 3d ___, No. 3:21-cv-1066-TKW-ZCB, slip op. at p. 8 (N.D. Fla. Mar. 8, 2023). Source: [http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CPQPAB/\\$file/final+order.pdf](http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CPQPAB/$file/final+order.pdf).

figures voiced concern about the “war on drugs,” the right level and kind of immigration, problems along the southwest border, migration crises originating in the Caribbean and elsewhere, or the growing criminal traffic in humans. The immigration system as a whole was widely viewed as increasingly dysfunctional and badly in need of reform. In national security circles, however, only smuggling of weapons of mass destruction carried weight, not the entry of terrorists who might use such weapons or the presence of associated foreign-born terrorists.¹⁹³

That lesson has ostensibly been lost on this administration. In my more than three decades of involvement in immigration and border security—both before and after September 11th-- our borders have never been less secure.

Again, thank you for the invitation to appear today, and I look forward to your questions.

plain text of [section 235(b) of the INA] and the Supreme Court’s holding in [Jennings v. Rodriguez, 583 U.S. ____ (2018) https://www.supremecourt.gov/opinions/17pdf/15-1204_f29g.pdf.], DHS argues that detention of applicants for admission is discretionary. In DHS’s view, [section 235(b) of the INA’s] mandatory language flows in only one direction—the statute prevents aliens from obtaining release, but it does not create obligations for DHS. In other words, DHS interprets the “shall” language in [section 235(b) of the INA] to limit the rights of aliens but not to limit its discretion. The Court rejects DHS’s argument and concludes that [section 235(b) of the INA’s] ‘shall be detained’ means what it says and that is a mandatory requirement.”). Source: [http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CPQPAB/\\$file/final+order.pdf](http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CPQPAB/$file/final+order.pdf).

¹⁹³ “The 9/11 Commission Report”, at pp. 383-84. Nat’l Comm. on Terrorist Attacks Upon the United States (Aug. 21, 2004). Source: <https://9-11commission.gov/report/>.

Statement of Brandon Judd
On Behalf of the National Border Patrol Council
Before the U.S. House of Representatives Committee on Homeland Security
Subcommittee on Oversight, Investigations, and Accountability Hearing
Entitled: “Biden’s Growing Border Crisis:
Death, Drugs, and Disorder on the Northern Border”
March 28, 2023

Chairman Bishop, Ranking Member Ivey and distinguished Members of the Subcommittee, I would like to thank you for inviting me to testify before you today in order to communicate the resource gaps and vulnerabilities that currently exist along our northern border with Canada.

My name is Brandon Judd and I currently serve as the President of the National Border Patrol Council, where I represent approximately 16,000 Border Patrol field agents and support staff. I have more than 25 years of experience as a Border Patrol Agent and a thorough understanding of the issues and policies affecting border security. During my career as a Border Patrol Agent, I have been assigned to two Northern Border Sectors – Houlton, Maine and Havre, Montana.

While nearly all of the focus in recent years has been on our southern border with Mexico, I applaud the Committee for holding this hearing and conducting much needed, and timely oversight of the lack of resources and the very real vulnerabilities that exist along our northern border.

Our 5,500-mile land and water border with Canada is well over twice the length of our border with Mexico. Even with such a vast amount of territory to patrol, we have only about 2,000 Border Patrol Agents assigned to the northern border. Given the 24/7 nature of our work, which is spread across three shifts per day, this leaves us with only about 450 Agents on duty at any one time. That is all.

Our northern border has some of the most rugged conditions you can imagine, both in terms of topography as well as weather, and we have to patrol it without the infrastructure we have along the southern border. We have many Agents who lack the ability to simply communicate with one another in the field. Even when they can talk, backup might be more than an hour away if they request assistance.

To help the Subcommittee better understand the threat landscape, last year about 107,000 individuals were denied entry into the U.S. from Canada. About 40,000 of these individuals were Canadians and were most likely denied entry because of a criminal record. The other 60,000 were not from Canada and tried to enter our country through the front door but were denied. Many of them will now try to enter the U.S. between the ports of entry where limited personnel resources are spread razor thin.

Furthermore, Canada has a more permissive visa system than we have in the U.S. Let me give you two examples. First, Mexican citizens can travel to Canada without a visa. Mexican
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citizens can land in Toronto and illegally cross into New York in just a couple of hours. They don't have to contend with security measures such as fencing, aerostats, or drones, like we have on the southern border. Individuals crossing illegally can cross either on land or even more easily by boat on one of the Great Lakes if the weather is good.

Second, Chinese tourists or students seeking entry to the U.S. are required to provide extensive documentation including being interviewed at a U.S. consulate. However, the bar for a visa to Canada is lower. They can land in Vancouver and, in a matter of hours, illegally cross our border by land or by boat into Washington State.

Canada is a sovereign country and they are free to determine who is eligible to enter their country, be granted asylum, or resettled as a refugee. Last year Canada processed over 4.8 million visa applications. This is for a country of 38 million people. In contrast, we processed 6.8 million visa applications, and we have a population of 330 million. So the number of travelers to Canada is significant.

The reality is that while the vast majority of those visa applicants to Canada are likely law abiding individuals, there are many that see entry to Canada as a gateway to the U.S. given our more stringent visa standards.

Last year, Border Patrol apprehended over 2,000 people along the northern border. However, because we lack the personnel and situational awareness on the northern border, and due to the forced deployment of Agents stationed on the northern border down to the southern border – in response to President Biden's border crisis – we are apprehending only a small fraction of illegal crossings.

While I have described a number of vulnerabilities and challenges we're contending with along the northern border, Congress does have the ability to dramatically improve border security, situational awareness and Agent safety along both the northern and southern borders.

Border Patrol staffing currently hovers around 19,300 Agents nationwide. In February, Tucson Sector Chief John Modlin testified before the House Oversight and Accountability Committee that Border Patrol needs at least 22,000 Agents to deal with the current crisis.

Increasing net personnel by 2,700 agents is going to take a tremendous effort that will require us to do two things simultaneously. First, we need to keep the Agents we already have and recruit more Agents. Sounds simple, but we have a problem. Border Patrol's attrition rate is currently 6.9 percent which is 72 percent higher than the Office of Field Operations. Furthermore, our attrition rate is expected to climb to over 9 percent by 2028.

The primary reason we cannot adequately recruit and retain Agents is that we lack pay parity with other federal law enforcement agencies.

If we continue to hemorrhage personnel, there is no way we will secure the border. We have spent billions on fencing, aircraft, and technology over the course of my career. All of these

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investments are important - and I want to thank you for it. However, we have not sufficiently invested in our agents, which are the most important element in border security.

Last Congress, Senators Portman, Sinema, Lankford and Kelly introduced S. 4775 which has a provision, section 4, to address our recruitment and retention issues. I know the Committee is working on significant reform legislation to address the border crisis and we greatly appreciate your efforts. I respectfully ask that you take action and that action must include addressing our recruitment and retention issues.

I thank the Subcommittee for inviting me here today and I look forward to answering any questions you may have.

Good Morning/Afternoon, Mr. Chair, members of the Committee,

My name is Robert Quinn, I am the Commissioner of the New Hampshire Department of Safety which oversees the New Hampshire Divisions of State Police and Homeland Security. By way of background, I was a sworn law enforcement officer for 30 years with the New Hampshire State Police culminating with my appointment as the Colonel before eventually becoming the Commissioner of the Department.

I have been invited here today to testify about New Hampshire's recent efforts to augment and support the humanitarian crisis that appears to be building along the Canadian border in our neighboring states. New Hampshire shares an international border with Canada that is over fifty (50) miles long and lies within what is known as the U.S. Border Patrol's Swanton Sector. The Swanton Sector includes the border area containing New Hampshire, Vermont, and a small portion of New York.

Just this past Friday, I had the fortune of touring our northern border in New Hampshire and meeting some of the excellent State, local, and federal law enforcement officers who work along the border. New Hampshire is unique in that the vast majority of the border consists of State Forest land accessible through one main road and an intricate system of forest roads built for logging companies, and snowmobile and ATV enthusiasts. Many of these roads are not on GPS maps, touch the northern border, and can only be traversed by off-road vehicles. In the winter, the terrain is cold, snow bound, and difficult to travel using conventional vehicles. I learned on Friday that Pittsborough, NH, which is the town along the border, is the largest town by

area in New England with 281.3 square mile of vast mountainous terrain and overseen by a part time Chief and one part time officer. Just for perspective, I was told that it takes over an hour to reach the closest hospital to the border. As with most northern border states, travel times can greatly increase based on local weather conditions.

On January 25, 2023, the U.S. Border Patrol announced that the Swanton Sector witnessed a 743% increase in apprehensions and encounters in the first quarter of the federal fiscal year 2023 when compared to the same period a year ago. Apprehensions and encounters from October to December increased from 136 in 2021 to 1,146 in 2022 exceeding the 1,065 apprehensions and encounters for all of 2021. As of early March 2023, the total number of apprehensions in this area was 2,227. While this amount appears small in comparison to numbers experienced at the southern border, this is a large and unexpected increase for a very remote area of the country with few resources available to address. To be clear, although New Hampshire has seen an increase in crossings, we have not yet seen the large increase that Vermont is presently experiencing. However, as more resources focus on the Vermont border, I believe that it is only a matter of time for New Hampshire to experience the same or similar increases.

During my recent visit to the border, I met with the State Police Troop Commander who is responsible for patrolling the north country. He indicated that it is important to be aware that many non-citizen migrants are victims of human trafficking. During my conversations with the local police chief and the residents I learned many are generally nervous due to reports of increased activity and significant drug seizures in recent years. I spoke with an individual who was concerned and nervous when she returns home after work that increased border crossing will result in individuals trespassing on her property.

New Hampshire is not waiting for this crisis to cause further impact to our State. Without complete operational control at the New Hampshire border, we leave our residents at increased risk. Under the leadership of Governor Chris Sununu, our State started taking steps to address the crisis in January. As I understand from New Hampshire Attorney General's Office, the United States Supreme Court has placed constitutional limits on what types of border protection laws they can enact on their own. However, under existing federal law, US Department of Homeland Security has the ability to deputize state and local law enforcement officers with the authority to enforce several federal immigration laws by entering into an agreement under 8 U.S.C. §1357 (g). This is sometimes referred to as a Section 287(g) agreement or a "I.C.E. Delegation Agreement." From our perspective, it is critical that Homeland Security delegate its authority to our State Police to detain and apprehend those who are crossing the border illegally in our State.

We started the process to obtain such a delegation back in early February, culminating with a letter dated February 17, 2023, in which we formally requested that the federal government delegate its authority to enforce federal border security laws. On that same day, we received a response explaining that no agreement could be entered into due to a national freeze on all delegation agreements and that no one-off custom agreements were authorized either. Unfortunately, two (2) days later we received word that a migrant passed away while attempting to cross the border in the Swanton Sector. Although that occurred in Vermont, we certainly want to use every public safety resource available we can to prevent that from happening in New Hampshire.

Our troopers are accustomed to having a presence along the border and are among the most professional and dedicated law enforcement officials in the country and since they have experience along the border, I believe that it would be seamless for them to augment the border

security effort through a Delegation Agreement. After we received a denial from Homeland Security at the regional level, Governor Sununu spoke with Homeland Security Secretary Mayorkas about this and sent a letter directly to him, asking his department to enter into such an agreement. To date Homeland Security has not granted our state a delegation agreement and no one from his Department has reached out to any State officials to begin drafting such an agreement.

There is one other request that we have made of the Department of Homeland Security that has not yet been addressed. Since approximately 2011, State Police has assisted in patrolling the northern border through a grant funded by F.E.M.A., another agency within the Department of Homeland Security, by participating in what is known as Operation Stone Garden. Operation Stone Garden is a joint task force where state, county, and local law enforcement officers partner with the US Border Patrol to conduct joint patrols along New Hampshire's border with Canada. Last year, State and local participants requested collectively approximately \$337,000 for additional border patrol details and funds to purchase three (3) all-terrain vehicles for state and local law enforcement agencies. Homeland Security denied this request for additional resources, including the vehicles, and instead level funded (with the 2021 grant year) the Stone Garden Grant at \$180,000. In his letter to Secretary Mayorkas, Governor Sununu requested that his Department reconsider this decision to give our state, county, and local law enforcement officers the funds and tools needed to help protect the border in this Operation.

We believe it is imperative to quickly respond to today's crisis with enhanced border security and prevent any further loss of life and limit illicit activity along our border. New Hampshire cannot fully unlock its resources for this effort without the help of the leadership at Homeland Security. I cannot emphasize enough that the I.C.E. and Border Patrol Agents

working along the New Hampshire border are hard-working and doing the best they can. New Hampshire law enforcement stands by ready to assist them just as soon as Homeland Security authorizes a Delegation Agreement and provides the requested increase in funding for Operation Stone Garden.

In the meantime, our Governor, in his 2024/2025 budget has proposed dedicating approximately one million four hundred thousand dollars (\$1,400,000) toward the creation of a Northern Border Alliance Program. If enacted, this program will establish a task force of state, county, and local law enforcement officers to patrol the roads, highways, and state forest land along the border to detect and deter illegal activity and to prevent any further escalation of the humanitarian crisis facing our borders.

We believe all of the above efforts, done in conjunction with one another, will prevent the northern border crisis from escalating within New Hampshire's borders.

Thank you for your time and attention to this important matter. I am happy to take any questions.