

FINDING OF MASS INFLUX OF ALIENS

On January 20, 2025, the President issued Presidential Proclamation, *Guaranteeing the States Protection Against Invasion*. That Presidential Proclamation recognizes an “ongoing influx of illegal aliens across the southern border of the United States.” *Id.* In support of that, the order notes that “[o]ver the last 4 years, at least 8 million illegal aliens were encountered along the southern border of the United States, and countless millions more evaded detection and illegally entered the United States.” *Id.*

Section 65.83 of Title 28 of the Code of Federal Regulations allows the Secretary¹ to “request assistance from a State or local government in the administration of the immigration laws of the United States” under certain specified circumstances. Among those circumstances are when “[t]he [Secretary] determines that there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of a State or locality.” 28 CFR § 65.83(b).

In making such a determination, the Secretary may also determine that “an actual or imminent mass influx of aliens [are] arriving off the coast or near a land border of the United States and present[] urgent circumstances requiring an immediate federal response.” 28 CFR § 65.83(d)(1) (using identical language as 8 U.S.C. § 1103(a)(10)). Such a determination is based on “the factors set forth in the definitions contained in” 28 CFR § 65.81.

I have determined that there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the

¹ Although the regulations reference the “Attorney General,” Congress has, since the publication of these regulations, transferred the authority and responsibility for administering and enforcing the immigration laws to the Secretary of Homeland Security. *See* Homeland Security Act of 2002 § 471, 6 U.S.C. § 291 (abolishing the former Immigration and Naturalization Service); *id.* § 441, 6 U.S.C. § 251 (transferring immigration enforcement functions from the Department of Justice to the Department of Homeland Security); Immigration and Nationality Act § 103(a)(1), 8 U.S.C. § 1103(a)(1) (“The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens . . .”).

residents of all 50 States and that an actual or imminent mass influx of aliens is arriving at the southern border of the United States and presents urgent circumstances requiring an immediate federal response. Over the last four years, our southern border has been overrun. Last month, Border Patrol encountered 47,330 aliens along the southern border. While that number is a major reduction from the peak over the last four years, it is still too high. To demonstrate, in that month Border Patrol released at least 6,920 aliens at the southwest border, the vast majority of whom are subject to mandatory detention under 8 U.S.C. § 1225(b). In other months during the last four years, the numbers were astronomically higher. In December 2022, for example, Border Patrol released at least 140,306 aliens at the southwest border. Whether the number is 140,000 or 6,000, this is not the way our immigration laws are supposed to work. Aliens arriving at ports of entry or entering unlawfully are supposed to be inspected. 8 U.S.C. § 1225(a)(3), (b). Unless they are “clearly and beyond a doubt entitled to be admitted,” they are supposed to be detained until either removed or they are granted discretionary relief such as asylum. 8 U.S.C. § 1225(b)(2)(A), (b)(1)(A)–(B).

This mandatory detention serves important public safety and national security purposes. Aliens who have not completed this process have not been effectively vetted for criminality or national security threats. Current databases do not allow for comprehensive and rapid searching for foreign convictions or other public safety and national security risks. As a result, the fact that the numbers at the border are effectively forcing DHS to engage in catch-and-release practices is eliminating or thwarting legally mandated screenings and it is threatening public safety and national security. This does not account for so-called gotaways, of which there have been millions over the last four years, who are not screened in any manner.

On the basis of these facts, I find that these circumstances endanger the lives, property,

safety, and welfare of the residents of every State in the Union. In fact, the only way to effectively prevent this danger to the States is to maintain operational control of the border, which Congress defined to mean “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.” 8 U.S.C. § 1701 note; *see also id.* (stating that the Secretary of DHS “shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States”).

I also find, in concurrence with the President, that there is currently an influx of aliens arriving across our entire southern border, which requires a federal response. While 28 CFR § 65.81 identifies a variety of factors that “may be considered” in finding an influx, I find the most dispositive factor is “magnitude.” The magnitude of the problem is alone sufficient to find an influx. The enumerated factors, however, further support this finding. First, if the influx is not controlled, it is likely to increase. I have seen again and again that failure to control the border increases the incentives for more aliens to attempt to enter unlawfully. Second, the introduction of unvetted foreign persons—at least some of whom will unquestionable be criminals—has a likelihood to increase criminal activity. Much of the illegal entries at our southern border involve other criminal conduct, including human trafficking, drug smuggling, and sexual assault. Third, law enforcement agencies, particularly immigration enforcement agencies, face unusual and overwhelming demands. In particular, immigration enforcement agencies currently face a shortage of detention capacity necessary to comply with the statutory detention obligations of 8 U.S.C. § 1225(b).

Accordingly, pursuant to the authorities under the Immigration and Nationality Act, 8 U.S.C. § 1101, *et sec.*, including the implementing regulations identified above, I find “that there

exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents” of all 50 States. I further find that an actual or imminent mass influx of aliens is arriving at the southern border of the United States and presents urgent circumstances requiring an immediate federal response. I therefore request the assistance of State and local governments in all 50 States.

This finding is effective immediately. It expires in 60 days, unless extended.

Dated:

1-23-25



A handwritten signature in blue ink, appearing to read "Benjamin C. Huffman", is written over a horizontal line.

Benjamin C. Huffman

Acting Secretary of Homeland Security.