

117TH CONGRESS
1ST SESSION

H. R. 2321

To direct the Secretary of Homeland Security to establish a plan to respond to irregular migration surges at the border, to establish an irregular migration surge border response fund, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2021

Mr. KATKO (for himself, Mr. CUELLAR, Mr. McCAUL, Mr. HIGGINS of Louisiana, Mr. GUEST, Mr. VAN DREW, Mr. NORMAN, Mrs. HARSHBARGER, Mr. GIMENEZ, Mrs. MILLER-MEEKS, Mrs. CAMMACK, Mr. LATURNER, Mr. GARBARINO, Mr. CLYDE, and Mr. MEIJER) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To direct the Secretary of Homeland Security to establish a plan to respond to irregular migration surges at the border, to establish an irregular migration surge border response fund, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Surge Re-
5 sponse and Resilience Act”.

1 **SEC. 2. IRREGULAR MIGRATION SURGE BORDER RE-**
2 **SPONSE PLAN AND FUND.**

3 (a) IN GENERAL.—Subtitle C of title IV of the
4 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.)
5 is amended by adding at the end the following new section:

6 **“SEC. 437. IRREGULAR MIGRATION SURGE BORDER RE-**
7 **SPONSE PLAN AND FUND.**

8 “(a) RESPONSE PLAN.—

9 “(1) IN GENERAL.—The Secretary, in coordina-
10 tion with the heads of appropriate Federal agencies,
11 shall develop a plan to respond to irregular migra-
12 tion surges at the border that present risks to bor-
13 der security (referred to in this section as the ‘Re-
14 sponse Plan’).

15 “(2) ELEMENTS.—The Response Plan shall in-
16 clude the following:

17 “(A) The identification of—

18 “(i) each agency, component, and of-
19 fice participating in the Response Plan;
20 and

21 “(ii) the role, chain of command, and
22 responsibilities, including minimum accept-
23 able response times, of each such entity
24 identified pursuant to clause (i).

25 “(B) A strategy to—

1 “(i) enhance security and reinforce in-
2 frastructure of the Department along the
3 border;

4 “(ii) maximize the use of Border Pa-
5 trol Processing Coordinators to assist with
6 processing individuals in the custody of the
7 Department at the border; and

8 “(iii) conduct streamlined screening
9 and processing procedures of individuals in
10 the custody of the Department at the bor-
11 der without diminishing security measures
12 or normally conducted checks during such
13 procedures.

14 “(C) A process to—

15 “(i) identify needed personnel and de-
16 tail such personnel to the border;

17 “(ii) request interagency assistance
18 for the border;

19 “(iii) quickly expand temporary proc-
20 essing and holding capacity to respond to
21 an irregular migration surge at the border;
22 and

23 “(iv) track and keep the Secretary in-
24 formed of the metrics identified in sub-
25 section (c).

1 “(D) Policies and procedures to ensure
2 timely communication and coordination between
3 relevant agencies relating to—

4 “(i) the capacity of Department bor-
5 der facilities; and

6 “(ii) transferring individuals at the
7 border in the custody of the Department
8 within the Department or to other agen-
9 cies.

10 “(E) A process to initiate and conduct an
11 after-action review of the efforts of the Depart-
12 ment in response to an irregular migration
13 surge at the border.

14 “(F) A strategy to ensure any individual at
15 the border in the custody of the Department is
16 not released into the United States during a
17 public health emergency, if any such individual
18 has a communicable disease relating to the pub-
19 lic health emergency.

20 “(G) A strategy to inform and coordinate,
21 for the purposes of public safety, any release of
22 individuals at the border from the custody of
23 the Department with the appropriate State,
24 Tribal, and local governments, non-govern-

1 mental organizations, and relevant transpor-
2 tation companies.

3 “(H) A regularly updated intelligence driv-
4 en analysis that includes—

5 “(i) trends at the border with respect
6 to demographics and group size that could
7 contribute to overcrowding of CBP border
8 facilities;

9 “(ii) migrant perceptions of United
10 States law and policy at the border, includ-
11 ing human smuggling organization mes-
12 saging and propaganda;

13 “(iii) tactics, techniques, and proce-
14 dures used by human smuggling organiza-
15 tions to exploit border security
16 vulnerabilities to facilitate such smuggling
17 activities across the border;

18 “(iv) a consideration of historical ap-
19 prehension recidivism rates and any fluc-
20 tuation with respect to such rates;

21 “(v) the methods and use of tech-
22 nology to organize and encourage irregular
23 migration and undermine border security;
24 and

1 “(vi) any other information the Sec-
2 retary determines appropriate.

3 “(b) DEPARTMENT COORDINATION.—

4 “(1) PARTNERSHIPS.—The Secretary shall di-
5 rect the participants in the Response Plan of the
6 Department to enter into necessary and appropriate
7 memoranda of understanding or other appropriate
8 agreements, to be periodically updated, to carry out
9 the requirements of this section.

10 “(2) ONGOING INTELLIGENCE ANALYSIS.—The
11 Secretary shall identify and implement the appro-
12 priate process to coordinate information sharing be-
13 tween the Office of Intelligence and Analysis, CBP,
14 ICE, and any other appropriate agency in prepara-
15 tion for or during an irregular migration surge at
16 the border to assess the estimated number of indi-
17 viduals traveling to the United States border outside
18 of standard trade and travel routes.

19 “(3) COMMUNICATION.—The Secretary shall
20 identify the most appropriate communication struc-
21 ture to ensure immediate and continued success of
22 the Response Plan.

23 “(c) RESPONSE PLAN ACTIVATION.—

24 “(1) THRESHOLD IDENTIFICATION AND ACTIVA-
25 TION.—The Secretary shall—

1 “(A) identify metric thresholds required to
2 activate the Response Plan; and

3 “(B) activate the Response Plan when
4 such thresholds are satisfied.

5 “(2) ELEMENTS.—The metric thresholds to be
6 considered by the Secretary pursuant to paragraph
7 (1) include the following:

8 “(A) The average amount of time an indi-
9 vidual at the border is in the custody of CBP,
10 disaggregated by whether such individual is a
11 single adult, a member of a family unit, or an
12 unaccompanied alien child.

13 “(B) The total percentage of individuals at
14 the border in the custody of the Department
15 with respect to capacity, disaggregated by—

16 “(i) field office or sector; and

17 “(ii) whether such an individual in the
18 custody of the Department is a single
19 adult, a member of a family unit, or an
20 unaccompanied alien child.

21 “(C) The total percentage of individuals in
22 the custody of a partner agency with respect to
23 capacity, disaggregated by each facility holding
24 such individuals.

1 “(D) The estimated number of individuals
2 traveling to the United States border outside of
3 standard trade and travel routes as determined
4 by intelligence and other sources.

5 “(E) Any other such threshold the Sec-
6 retary determines appropriate.

7 “(3) NOTIFICATIONS TO CONGRESS.—

8 “(A) IN GENERAL.—Not later than 45
9 days after the date of the enactment of this
10 Act, the Secretary shall notify the appropriate
11 congressional committees of the finalization of
12 the metric thresholds required under paragraph
13 (1)(A).

14 “(B) UPDATING METRIC THRESHOLDS.—
15 Not later than 14 days after the Secretary up-
16 dates such metric thresholds, the Secretary
17 shall notify the appropriate congressional com-
18 mittees of such update.

19 “(d) AFTER-ACTION REVIEW.—The Secretary shall
20 develop a process, including policies and procedures, to ini-
21 tiate and conduct an after-action review of the efforts of
22 the Department in response to an irregular migration
23 surge at the border that presents risks to border security.
24 The review shall—

1 “(1) be conducted at the conclusion of such a
2 surge in which the Response Plan has been activated
3 by the Secretary; and

4 “(2) include a consideration of any necessary
5 changes, including allocation of resources and
6 changes in authority, law, or policy to improve the
7 ability of the Department to respond to future irreg-
8 ular migration surges at the border and mitigate
9 the risks to border security from such surges.

10 “(e) UPDATING RESPONSE PLAN.—The Secretary
11 shall—

12 “(1) periodically update the Response Plan and
13 the appropriate metric thresholds to activate the Re-
14 sponse Plan; and

15 “(2) consider the most recent action-after re-
16 view required under subsection (d) for such an up-
17 date.

18 “(f) BRIEFING TO CONGRESS.—If the Secretary acti-
19 vates the Response Plan pursuant to subsection (e)(1)(B),
20 not later than 14 days after such activation, the Secretary
21 shall—

22 “(1) brief the appropriate congressional com-
23 mittees with respect to such activation; and

24 “(2) include with such briefing an assessment
25 with respect to whether there is a need to obligate

1 and expend amounts available from the Irregular
2 Migration Surge Border Response Fund, established
3 pursuant to subsection (g).

4 “(g) IRREGULAR MIGRATION SURGE BORDER RE-
5 SPONSE FUND.—

6 “(1) CREATION OF FUND.—There is established
7 in the Treasury of the United States a fund to be
8 known as the ‘Irregular Migration Surge Border Re-
9 sponse Fund’ (referred to in this section referred to
10 as the ‘Fund’), consisting of amounts appropriated
11 pursuant to the authorization of appropriations in
12 paragraph (4).

13 “(2) INVESTMENT OF AMOUNTS.—

14 “(A) IN GENERAL.—The Secretary of the
15 Treasury shall invest such portion of the Fund
16 as is not required to meet current withdrawals
17 in interest-bearing obligations of the United
18 States or in obligations guaranteed as to both
19 principal and interest by the United States.

20 “(B) INTEREST AND PROCEEDS.—The in-
21 terest on, and the proceeds from the sale or re-
22 demption of, any obligations held in the Fund
23 shall be credited to and form a part of the
24 Fund.

25 “(3) USE OF FUNDS.—

1 “(A) IN GENERAL.—The Secretary may
2 only obligate and expend amounts available in
3 the Fund—

4 “(i) if the Secretary activates the Re-
5 sponse Plan pursuant to subsection
6 (a)(4)(A); and

7 “(ii) for the purposes described in
8 subparagraph (B).

9 “(B) PURPOSES.—The purposes described
10 in this subparagraph are the following:

11 “(i) Replenishing the depletion of
12 consumables, personal protective equip-
13 ment, medical supplies and equipment,
14 transportation equipment, and personnel
15 overtime funds.

16 “(ii) Expanding temporary Depart-
17 ment processing capacity, long-term hold-
18 ing capacity, and transportation services
19 for individuals at the border in the custody
20 of the Department or partner agencies.

21 “(iii) Ensuring timely communication
22 and transportation between the agencies of
23 the Department, or with partner agencies,
24 with respect to the transfer of individuals

1 at the border in the custody of the Depart-
2 ment.

3 “(iv) Requesting interagency assist-
4 ance and detailing Department personnel
5 in order to respond to an irregular migra-
6 tion surge.

7 “(4) REMAINING AMOUNTS.—

8 “(A) IN GENERAL.—Amounts in the Fund
9 shall remain available until expended.

10 “(B) EXCEPTION.—Amounts remaining in
11 the Fund at the end of fiscal year 2025 shall
12 be returned to the general fund of the Treas-
13 ury.

14 “(5) AUTHORIZATION OF APPROPRIATIONS.—

15 There are authorized to be appropriated to the Ir-
16 regular Migration Surge Border Response Fund
17 \$1,000,000,000 in fiscal year 2022 and such sums
18 as are necessary to maintain a balance of
19 \$1,000,000,000 for each fiscal year from 2022
20 through 2025.

21 “(h) DEFINITIONS.—In this section:

22 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
23 TEES.—The term ‘appropriate congressional com-
24 mittees’ means—

1 “(A) the Committee on Homeland Security
2 of the House of Representatives; and

3 “(B) the Committee on Homeland Security
4 and Governmental Affairs of the Senate.

5 “(2) BORDER.—The term ‘border’ means the
6 international land borders of the United States.

7 “(3) CBP.—The term ‘CBP’ means U.S. Cus-
8 toms and Border Protection.

9 “(4) ICE.—The term ‘ICE’ means U.S. Immi-
10 gration and Customs Enforcement.

11 “(5) IRREGULAR MIGRATION SURGE.—The term
12 ‘irregular migration surge’ means a significant in-
13 crease or a sustained large number of Department
14 encounters with individuals at the border that—

15 “(A) do not use the formal immigration
16 system of countries they are traveling through;
17 and

18 “(B) are traveling to, or attempting to
19 enter, the United States illegally.

20 “(6) PUBLIC HEALTH EMERGENCY.—The term
21 ‘public health emergency’ means a public health
22 emergency declared by the Secretary of Health and
23 Human Services pursuant to section 319 of the Pub-
24 lic Health Service Act (42 U.S.C. 247d).”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1(b) of the Homeland Security Act of 2002 is
3 amended by inserting after the item relating to section
4 436 the following new item:

“Sec. 437. Irregular Migration Surge Border Response Plan and Fund.”.

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