

117TH CONGRESS
1ST SESSION

S. 1949

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

IN THE SENATE OF THE UNITED STATES

MAY 27, 2021

Mr. PORTMAN (for himself and Mr. KELLY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To direct the Secretary of Homeland Security to establish a plan to respond to irregular migration at the border, to establish an irregular migration 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 Response Resil-

5 ience Act”.

1 **SEC. 2. IRREGULAR MIGRATION BORDER RESPONSE PLAN**
 2 **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:

6 **“SEC. 437. IRREGULAR MIGRATION BORDER RESPONSE**
 7 **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 at the border that present risks to border secu-
 13 rity (referred to in this section as the ‘Response
 14 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—

1 “(i) to enhance security and reinforce
2 infrastructure of the Department along the
3 border;

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

8 “(iii) to 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—

15 “(i) to identify needed personnel and
16 detail such personnel to the border;

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

19 “(iii) to quickly expand temporary
20 processing and holding capacity to respond
21 to an irregular migration event at the bor-
22 der; and

23 “(iv) to track and keep the Secretary
24 informed of the metrics identified under
25 subsection (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 event at the border.

14 “(F) A strategy to ensure that an indi-
15 vidual at the border in the custody of the De-
16 partment is not released into the United States
17 during a public health emergency if the indi-
18 vidual has a communicable disease directly re-
19 lating to the public health emergency.

20 “(G) A strategy, for the purpose of public
21 safety, to inform and coordinate with other
22 Federal agencies, nongovernmental organiza-
23 tions, and relevant transportation companies
24 with respect to any release at the border of an
25 individual from the custody of the Department.

“(H) A regularly updated intelligence-driven analysis that includes—

“(i) trends at the border with respect to demographics and group size that could contribute to overcrowding of U.S. Customs and Border Protection facilities;

“(ii) migrant perceptions of United States law and policy at the border, including human smuggling organization messaging and propaganda;

“(iii) tactics, techniques, and procedures used by human smuggling organizations to exploit border security vulnerabilities to facilitate such smuggling activities across the border;

“(iv) the methods and use of technology to organize and encourage irregular migration and undermine border security; and

“(v) any other information the Secretary determines appropriate.

“(b) DEPARTMENT COORDINATION.—

“(1) PARTNERSHIPS.—

“(A) IN GENERAL.—The Secretary shall direct the participants in the Response Plan to

1 enter into necessary and appropriate memo-
2 randa of understanding or other appropriate
3 agreements, to be periodically updated, to carry
4 out the requirements of this section.

5 “(B) RULE OF CONSTRUCTION.—Nothing
6 in this section may be construed to require par-
7 ticipants in the Response Plan to share the in-
8 formation or status of any individual.

9 “(2) ONGOING INTELLIGENCE ANALYSIS.—The
10 Secretary shall identify and implement the appro-
11 priate process to coordinate information sharing be-
12 tween the Office of Intelligence and Analysis, U.S.
13 Customs and Border Protection, U.S. Immigration
14 and Customs Enforcement, and any other appro-
15 priate agency in preparation for or during an irreg-
16 ular migration event at the border to assess the esti-
17 mated number of individuals traveling to the United
18 States border outside of standard trade and travel
19 routes.

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

24 “(c) RESPONSE PLAN ACTIVATION.—

1 “(1) THRESHOLD IDENTIFICATION, ACTIVA-
2 TION, AND DEACTIVATION.—The Secretary shall—

3 “(A) identify metric thresholds required to
4 activate the Response Plan;

5 “(B) activate the Response Plan when one
6 or more such thresholds are exceeded; and

7 “(C) deactivate the Response Plan when
8 one or more thresholds are no longer met.

9 “(2) ELEMENTS.—The metric thresholds to be
10 considered by the Secretary pursuant to paragraph
11 (1) shall include the following:

12 “(A) The average amount of time an indi-
13 vidual at the border is in the custody of U.S.
14 Customs and Border Protection, disaggregated
15 by whether such individual is a single adult, a
16 member of a family unit, or an unaccompanied
17 alien child.

18 “(B) The total percentage of individuals at
19 the border in the custody of the Department
20 with respect to capacity, disaggregated by—

21 “(i) field office or sector; and

22 “(ii) whether such an individual in the
23 custody of the Department is a single
24 adult, a member of a family unit, or an
25 unaccompanied alien child.

1 “(C) The total percentage of individuals in
2 the custody of a partner agency with respect to
3 capacity, disaggregated by each facility holding
4 such individuals.

5 “(D) The estimated number of individuals
6 traveling to the United States border outside of
7 standard trade and travel routes as determined
8 by intelligence and other sources.

9 “(E) The estimated number of individuals
10 at the southern border of the United States
11 who are seeking food, shelter, or medical care
12 due to a natural disaster or other humanitarian
13 crisis in their home countries.

14 “(F) Any other such threshold the Sec-
15 retary considers appropriate.

16 “(3) NOTIFICATIONS TO CONGRESS.—

17 “(A) IN GENERAL.—Not later than 90
18 days after the date of the enactment of this sec-
19 tion, the Secretary shall—

20 “(i) publish in the Federal Register
21 the final of metric thresholds required
22 under paragraph (1)(A); and

23 “(ii) notify the appropriate commit-
24 tees of Congress of such publication.

1 “(B) UPDATES.—Not later than 14 days
2 after the Secretary updates such metric thresh-
3 olds, the Secretary shall notify the appropriate
4 committees of Congress of such update.

5 “(d) AFTER-ACTION REVIEW.—

6 “(1) IN GENERAL.—The Secretary shall—

7 “(A) develop a process, including policies
8 and procedures, for initiating and conducting
9 an after-action review of the efforts of the De-
10 partment in response to an irregular migration
11 event at the border that poses a risk to border
12 security; and

13 “(B) conduct such a review at the conclu-
14 sion of any irregular migration event for which
15 the Response Plan has been activated.

16 “(2) ELEMENTS.—Each such review shall in-
17 clude the following:

18 “(A) An assessment of any changes nec-
19 essary, including adjustments in the allocation
20 of resources and modifications to authority, law,
21 or policy—

22 “(i) to improve the ability of the De-
23 partment to respond to future irregular
24 migration events at the border; and

1 “(ii) to mitigate the risks to border
2 security posed by irregular migration
3 events.

4 “(B) Recommendations on reforms nec-
5 essary to enable the Department to better co-
6 ordinate with other Federal agencies and non-
7 governmental organizations on cases of individ-
8 uals requesting asylum in the United States.

9 “(3) REPORT.—

10 “(A) IN GENERAL.—Not later than 90
11 days after the completion of each after-action
12 review, the Secretary shall submit to the appro-
13 priate committees of Congress a report on the
14 results of the review.

15 “(B) FORM.—A report required under sub-
16 paragraph (A) shall be submitted in unclassi-
17 fied form but may contain a classified annex.

18 “(e) UPDATING RESPONSE PLAN.—The Secretary
19 shall—

20 “(1) periodically update the Response Plan and
21 the appropriate metric thresholds to activate the Re-
22 sponse Plan; and

23 “(2) consider the most recent action-after re-
24 view required under subsection (d) for such an up-
25 date.

1 “(f) BRIEFING TO CONGRESS.—If the Secretary acti-
 2 vates the Response Plan pursuant to subsection (c)(1)(B),
 3 not later than 14 days after such activation, the Secretary
 4 shall—

5 “(1) brief the appropriate committees of Con-
 6 gress with respect to such activation; and

7 “(2) include with such briefing an assessment
 8 with respect to whether there is a need to obligate
 9 and expend amounts available from the Irregular
 10 Migration Border Response Fund, established pursu-
 11 ant to subsection (g).

12 “(g) IRREGULAR MIGRATION BORDER RESPONSE
 13 FUND.—

14 “(1) ESTABLISHMENT.—There is established in
 15 the Treasury of the United States a fund to be
 16 known as the ‘Irregular Migration Border Response
 17 Fund’ (referred to in this section as the ‘Fund’),
 18 consisting of amounts appropriated pursuant to
 19 paragraph (5).

20 “(2) INVESTMENT OF AMOUNTS.—

21 “(A) IN GENERAL.—The Secretary of the
 22 Treasury shall invest such portion of the Fund
 23 as is not required to meet current withdrawals
 24 in interest-bearing obligations of the United

1 States or in obligations guaranteed as to both
2 principal and interest by the United States.

3 “(B) INTEREST AND PROCEEDS.—The in-
4 terest on, and the proceeds from the sale or re-
5 demption of, any obligations held in the Fund
6 shall be credited to and form a part of the
7 Fund.

8 “(3) USE OF FUNDS.—

9 “(A) IN GENERAL.—The Secretary may
10 only obligate and expend amounts available in
11 the Fund—

12 “(i) if the Secretary activates the Re-
13 sponse Plan pursuant to subsection
14 (c)(1)(B); and

15 “(ii) for the purposes described in
16 subparagraph (B).

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

19 “(i) Replenishing the depletion of
20 consumables, personal protective equip-
21 ment, medical supplies and equipment,
22 transportation equipment, and personnel
23 overtime funds.

24 “(ii) Expanding temporary Depart-
25 ment processing capacity.

1 “(iii) Improving and ensuring—

2 “(I) age-appropriate and family-
3 appropriate shelter capacity; and

4 “(II) the safety of, and transpor-
5 tation and telecommunications serv-
6 ices for, individuals at the border in
7 the custody of the Department or
8 partner agencies.

9 “(iv) Coordinating with and providing
10 funding for nongovernmental organiza-
11 tions.

12 “(v) Ensuring timely communication
13 and transportation between the agencies of
14 the Department, or with partner agencies,
15 with respect to the transfer of individuals
16 at the border in the custody of the Depart-
17 ment.

18 “(vi) Requesting interagency assist-
19 ance and detailing Department personnel
20 in order to respond to an irregular migra-
21 tion event.

22 “(vii) Providing appropriate and ac-
23 cessible health care, including mental
24 health care, for all individuals at the bor-
25 der in the custody of the Department.

1 “(viii) Providing appropriate trauma-
 2 informed care for unaccompanied alien
 3 children (as defined in section 462(g)) at
 4 the border in the custody of the Depart-
 5 ment.

6 “(4) REMAINING AMOUNTS.—

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

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

13 “(5) AUTHORIZATION OF APPROPRIATIONS.—

14 There are authorized to be appropriated to the Ir-
 15 regular Migration Border Response Fund—

16 “(A) \$1,000,000,000 for fiscal year 2022;
 17 and

18 “(B) such sums as are necessary to main-
 19 tain a balance of \$1,000,000,000 for each of
 20 fiscal years 2022 through 2025.

21 “(h) DEFINITIONS.—In this section:

22 “(1) APPROPRIATE COMMITTEES OF CON-
 23 GRESS.—The term ‘appropriate committees of Con-
 24 gress’ means—

1 “(A) the Committee on Homeland Security
2 and Governmental Affairs of the Senate; and

3 “(B) the Committee on Homeland Security
4 of the House of Representatives.

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

7 “(3) IRREGULAR MIGRATION.—The term ‘irreg-
8 ular migration’ means the arrival of 1 or more indi-
9 viduals at the border who are traveling to the United
10 States outside of standard trade and travel routes
11 for the purpose of attempting to enter the United
12 States illegally.

13 “(4) IRREGULAR MIGRATION EVENT.—The
14 term ‘irregular migration event’ means a significant
15 increase in, or a sustained large number of, Depart-
16 ment encounters with individuals at the border who
17 are traveling to the United States outside of stand-
18 ard trade and travel routes for the purpose of at-
19 tempting to enter the United States illegally.

20 “(5) 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:

“Sec. 437. Irregular migration border response plan and fund.”.

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