

No. 22-30303

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATES OF ARIZONA, LOUISIANA, MISSOURI et al.,
Plaintiffs-Appellees,

v.

CENTERS FOR DISEASE CONTROL AND PREVENTION et al.,
Defendants-Appellants,

and

INNOVATION LAW LAB,
Proposed-Intervenor-Defendant.

On Appeal from the United States District Court for the Western
District of Louisiana
No. 6:22-cv-00885-RRS-CBW

AMICUS BRIEF OF ADVOCATES FOR VICTIMS OF ILLEGAL
ALIEN CRIME IN SUPPORT OF PLAINTIFFS-APPELLEES AND
AFFIRMANCE

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CERTIFICATE OF INTERESTED PARTIES

In addition to those persons listed in Plaintiffs-Appellants' Statement of Interested Persons, the following persons have an interest in this amicus curiae brief:

1. Advocates for Victims of Illegal Alien Crime, amicus curiae,
2. Attorneys United for a Secure America, and
3. Attorneys for amicus curiae: Walter S. Zimolong, Esq.,
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Dated: September 7, 2022

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**CORPORATE DISCLOSURE STATEMENT AND
STATEMENT OF AMICUS CURIAE**

Amicus curiae files this certificate of interested persons and corporate disclosure statement, as required by Local Rule 26.1-1.

Amicus curiae, Advocates for Victims of Illegal Alien Crime, is a non-government, non-profit corporation that has no parent corporation that is publicly held and that owns 10% or more of its stock.

All parties have consented to the filing of this amicus curiae brief. No party or party's counsel authored any part of this brief. No person or entity, other than amicus, its members, or its counsel, has made a monetary contribution to its preparation or submission.

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INTEREST OF AMICUS CURIAE

Advocates for Victims of Illegal Alien Crime (AVIAC) is an advocacy organization founded and led by individuals who have lost family members because of crimes committed by illegal aliens. AVIAC's mission is to be both a source of support for such victims across the country and an advocate for policies that will enforce the nation's immigration laws and prevent government actors from sheltering illegal aliens, particularly criminal aliens, from deportation. AVIAC presents the raw statistics of illegal alien crime. And it gives a face on these statistics with victims' stories. It also presents legal arguments different from those advanced by the parties. AVIAC, therefore, has an interest in this case.

SUMMARY OF ARGUMENT

The CDC's termination of the Title 42 Orders has exacerbated an already critical situation along the southern border. Title 42 was a valuable tool in preventing the influx of illegal aliens. Statistics bear that out. Before the unlawful termination of the Title 42 Orders, over 1 million illegal aliens were removed. Moreover, DHS predicts the CDC's unlawful termination of the Title 42 Orders will result in a three-fold increase to 18,000 daily border crossings. This influx of illegal aliens will lead to an increase in crime. Crimes committed by illegal aliens are having a harmful effect on the citizens of our nation. States rely on the federal government for a critical law enforcement role—enforcement of our nation's immigration laws. But the CDC paid no mind to the harm it would inflict on the states when it abruptly terminated the Title 42 Orders. Surely, the burdens of increased criminal activity inflict a concrete harm on the states. And certainly, this harm is irreparable as it cannot be abated except by equitable relief. Accordingly, this Court should affirm the district court.

ARGUMENT

ILLEGAL ALIEN CRIME HAS A DELETERIOUS EFFECT ON OUR NATION'S PUBLIC SAFETY AND PUBLIC HEALTH

Illegal alien crime has a deleterious effect on our nation's public safety and public health. Appellee states, like all states, depend on the federal government to ameliorate these impacts because the states cannot do it alone. *See Arizona v. United States*, 567 U.S. 387 (2012). If the federal government abandons its duties, states cannot step in to fill the void. *Nyquist v. Mauclet*, 432 U.S. 1, 10 (1977) (“Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere”).

In 2020, ICE arrested 103,603 illegal aliens, *approximately 90% of whom had prior criminal convictions or pending criminal charges*. ICE ANN. REP. (2020)¹. Those arrested included 4,067 known or suspected gang members, including 675 members of MS-13. For example, according to ICE Enforcement and Removal Operations statistics for Miami, the principal Florida office for which statistics are publicly available, ICE

¹ U.S. Immigration and Customs Enforcement, ICE Annual Report Fiscal Year 2020, (Dec. 23, 2020) <https://www.ice.gov/doclib/news/library/reports/annualreport/iceReportFY2020.pdf>

arrested 7,397 illegal aliens in 2020. Of those, 4,249 were convicted criminals and 2,374 had pending criminal charges, meaning over 90% of those arrested had criminal convictions or pending criminal charges. While these statistics are jarring, they are still cold statistics. And the statistics also only count state level offenses committed by illegal aliens, not federal crimes. Moreover, the most recent study on the topic indicates approximately 90 percent of MS-13 gang members in the United States are illegal aliens.² And almost 17% of the federal prison population consists of non-US citizens.³ In 2018, arrests of illegal aliens represented over two thirds of all federal arrests.⁴

What happens when our immigration laws are not enforced? Illegal aliens commit crimes. For example, on August 16, 2022, Border Patrol agents arrested Miguel Vargas Mendoza, an illegal alien with several prior convictions including raping a child under the age of four. Mendoza

² Kris W. Kobach, Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration, 22 Geo. Immigr. L.J. 459, 462 (2008)

³ Federal Bureau of Prisons, Inmate Citizenship, (Sep. 3, 2022), https://www.bop.gov/about/statistics/statistics_inmate_citizenship.jsp.

⁴ Department of Justice, *Immigration, Citizenship, and the Federal Justice System*, 1998-2018 (2021). <https://www.bjs.gov/content/pub/pdf/icfjs9818.pdf>

had prior convictions for possession of a controlled substance and marijuana for sale, sex with a child three years or younger and willful cruelty to a child.⁵

In yet another case, on March 10, 2022, a man named Jean R. Macean, a citizen of Haiti and an illegal alien with multiple prior drug charges, was taken into custody for the brutal murder of a Daytona Beach couple during “Bike Week”. Macean was arrested for the murder of Terry and Brenda Aultman and charged with two counts of first-degree murder. Daytona Beach Police Chief Jakari Young described these killings as “one of the most vicious attacks I’ve ever seen in my 20 years.”⁶

In yet another case, on August 4, 2022, illegal alien José Paulino Pascual-Reyes was charged with first-degree kidnapping, three counts of capital murder and two counts of abuse of a corpse in connection to the gruesome discovery of two decomposing corpses at his residence in Dadeville, Alabama. The local police chief confirmed that those bodies were those of a woman—Sandra Vazquez Ceja—and her son, a boy under the

⁵ Adam Shaw, *Border Patrol nab illegal immigrant with conviction for raping child under age of 4*, Fox News Digital (Aug. 19, 2022), <https://www.foxnews.com/politics/border-patrol-nab-illegal-immigrant-conviction-raping-child-age-4>.

⁶ Press Release, Executive Office of Governor Ron DeSantis, *Man Who Brutally Murdered Daytona Beach Couple During Bike Week was an Illegal Immigrant with Multiple Prior Drug Charges* (March 30, 2022), <https://www.flgov.com/2022/03/30/man-who-brutally-murdered-daytona-beach-couple-during-bike-week-was-an-illegal-immigrant-with-multiple-prior-drug-charges/>.

age of 14. Pascual-Reyes is also accused of tying a twelve-year-old girl to a bedpost for at least a week while assaulting her and keeping her in a comatose state by feeding her alcohol. The girl escaped by chewing through her restraints and was found by police wandering on the road by the Dadeville residence.⁷

Further, in one week this summer—July 17 through July 23—in one sector (Yuma, AZ), Border Patrol agents encountered more than 5,600 migrants from 46 different counties, according to statistics provided by Yuma Sector Chief Patrol Agent Chris Clem. Chief Clem stated that 104 migrants apprehended were convicted felons, while 57 migrants were prosecuted for illegal entry, re-entry, and smuggling. Border Patrol Agents also stopped nine smuggling attempts, and encountered more than 120 unaccompanied minors.⁸

These horrific crimes represent only a small sample of the many crimes illegal aliens commit each year in appellee states. There is one

⁷ Danielle Wallace, *Illegal immigrant charged in Alabama kidnapping, murder case after girl's escape leads to decomposing bodies*, Fox News Digital (Aug. 4, 2022), <https://www.foxnews.com/us/illegal-immigrant-charged-alabama-kidnapping-murder-case-girls-escape-leads-decomposing-bodies>.

⁸ Adam Shaw, *Border Patrol in Yuma nab over 100 convicted felons, migrants from 46 countries in a week*, Fox News Digital (Jul. 26, 2022), <https://www.foxnews.com/politics/border-patrol-yuma-nab-over-100-convicted-felons-migrants-46-countries-week>

thing these crimes have in common: they would not have happened if the Administration properly enforced immigration laws.

Then there is the fiscal toll of illegal alien crime. One study pegged the fiscal damage of illegal alien crime at the state and local level at over \$84 billion.⁹ That study indicated that appellee states' combined share of that burden is approximately \$26 billion.

For the period that Title 42 was in effect, March 2020 through May 2022, approximately 1.8 million people were required to remain outside of the United States pending a hearing on their case.¹⁰ This amounted to “most encounters” at the border with migrants. Additionally, 90% of those expelled under Title 42 expulsion authority were “single adults”.¹¹ Under the prior administration, 80% or more of monthly migrant encounters at the U.S.-Mexico border resulted in expulsion from the U.S. under Title 42. That percentage declined under the current President, who had

⁹ Jack Martin & Eric Ruark, Federation for American Immigration Reform, *The Fiscal Burden of Illegal Immigration on United States Taxpayers*, (Feb. 2011) https://www.fairus.org/sites/default/files/2017-08/USCostStudy_2010.pdf

¹⁰ John Gramlich, *Key facts about Title 42, the pandemic policy that has reshaped immigration enforcement at U.S.-Mexico border*, Pew Research Center (Apr. 27, 2022), <https://www.pewresearch.org/fact-tank/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/>

¹¹ *Id.*

pledged during his campaign for the White House to reverse certain immigration policies.¹²

The removal of Title 42 expulsion authority will surely make these statistics worse, and the states will be left picking up the pieces. The States and their citizens pay the price for these crimes in the form of the deaths and physical and emotional injuries of the victims and their families and the tax dollars spent processing the accused through the justice system and ultimately incarcerating the illegal alien perpetrators in prisons throughout these states. Title 42 expulsion authority is a valuable tool provided to Border Patrol Agents that needs to stay in place so these agencies can continue to try to uphold their clear congressional mandate to prevent illegal aliens from coming into this nation.

¹² *Id.*

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

Dated: September 8, 2022

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B), 28.1(e)(2), and 29(d). The brief contains 1331 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) or Federal Rule of Appellate Procedure 28.1(e) and the type of style requirements of Federal Rule of Appellate Procedure 32(a)(6).

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CERTIFICATE OF SERVICE

I hereby certify the foregoing has been filed electronically and is available for viewing and downloading from the Electronic Case Filing System of the United States Court of Appeals for the 5th Circuit.

Date: September 8, 2022

/s/ Walter S. Zimolong, Esquire