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The Real Border Crisis

Adam Serwer

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America has tried to solve its immigration problem for decades through brute force. It doesn't work.

What is the border crisis? Is it the recent surge of migrants, or is it the treatment of those migrants in detention facilities? The answer to that question—or whether you consider the situation at the border to be a crisis at all—most likely determines what you think the Biden administration should do about it.

For conservatives, the answer is clear: Democrats invited the increase in migrants with their permissive, open-borders immigration policies. Republican Senator Tom Cotton of Arkansas has accused President Joe Biden of announcing that “the United States will not secure our border, and that is a big welcome sign to migrants from across the world.”

If the Biden administration's leniency is responsible for the increase, as Republicans like Cotton believe, then it follows that the U.S. government should employ harsh measures in the interest of deterrence, much like the Trump administration did.

Some Republicans have sought to have it both ways, accusing the White House of being too permissive while also attacking the administration for detaining large numbers of migrants. Senator Marco Rubio of Florida declared on Twitter that the increase in apprehensions was “caused entirely by President Biden's words & actions” and, on the same day, that the administration was “putting kids in cages.”

In the kind of paradox that would be almost impossible in any other area of public policy, the distinctions between the Trump and Biden administrations' approaches to the southern border have been both under- and overexaggerated. The press has embraced the narrative of a border crisis—but that is consistent with how the media have covered immigration for decades, and how they covered the matter during the Trump administration. The problems at the border are very real, but they are also long-standing issues for which the crisis narrative offers only one, false solution: that illegal immigration can be prevented by the ruthless application of state violence.

“It's brazenly disingenuous for individuals who actively supported the Trump administration's anti-immigrant policies to use terms like *kids in cages*,” Naureen Shah, a senior policy counsel for the ACLU, told me. “It is outrageous that so many elected officials feign concern and compassion for these kids, when they did not lift a finger to help them, and will prefer that they remain in perilous conditions on the other side of the border.”

The talk of open borders is simply nonsense. There has been a large rise in apprehensions at the southern border, including of unaccompanied migrant children—but the increase in adult apprehensions is at least partly the result of people repeatedly trying to cross after being expelled under Title 42, a law that gives the government the authority to close the border for public-health reasons. Analyses from both the Cato Institute and the American Immigration Council have found that such repeated attempts at crossing after being turned away—and not a surge in the number of new individuals crossing—seem to be responsible for the rise in apprehensions.

Republicans, some conservative Democrats, and much of the media also contend that the rise is Biden’s fault. Last week, *The Washington Post* accused the Biden administration of “making appeals that seem directed more at liberal activists than the migrants they need to dissuade from coming to the country,” and of “tearing down guardrails” that prevented migrants from coming.

The evidence for Biden’s reversals having caused the rise to begin with is thin. The Biden administration did rescind the 2018 “remain in Mexico” policy, which was an attempt to effectively end migrants’ legal right to apply for asylum and which, as the *Post*’s Greg Sargent has written, “exposed migrants to violence, kidnapping and refugee camp conditions.” The administration has also been allowing in a small number of families, according to Homeland Security Secretary Alejandro Mayorkas, “when Mexico’s capacity is reached.” And, most significant, it shifted away from a Trump-era policy of expelling unaccompanied children under Title 42, a policy that a federal judge struck down in December. The day the ruling was issued, the Trump administration shuttled 33 Guatemalan children out of the country, the last of some 16,000 to be expelled.

It is also true that some migrants may also have believed they would be treated more fairly under Biden than Trump. “Word travels very quickly through the smugglers’ networks that a policy has changed, making people believe that now is the time to come,” Doris Meissner, a former commissioner of the now-defunct Immigration and Naturalization Service and the current director of the Migration Policy Institute’s U.S. Immigration Policy Program, told me.

But even if that is the case, it could not account on its own for the rise in apprehensions at the border, which began last April, mirroring and potentially surpassing one that occurred in May of 2019. Migration surges like these rarely have a single cause—in this case, violence in the migrants’ home countries, the coronavirus pandemic, and a series of natural disasters all appear to have played a role. But the harsh measures the Trump administration put in place did not prevent either the 2019 increase in migration or the rise that began last year; assuming the Biden administration’s recent changes alone are responsible requires a breach in the space-time continuum.

Moreover, most of the restrictions imposed by the Trump administration during the coronavirus pandemic have remained in place, including the use of Title 42—its application to unaccompanied children excepted. In the year since it was first applied, “of more than 650,000 ... migrants at the U.S.-Mexico border, fewer than 1% have been able to seek protection,” according to the *Los Angeles Times*. The border, in other words, remains quite closed.

We cannot determine from this record whether the Biden administration’s policies are wise or effective. What we can say is that the previous administration’s approach—inflicting as much pain as possible on migrants to deter others from coming—did not work. No torture that

American policy makers could devise and implement would crush the hope of desperate people seeking to make a better life for their children.

The rendering of an uncontrolled surge of undocumented immigrants being welcomed across an open border is completely false. But it nevertheless serves the interest of Republicans who want harsher border controls, former Trump-administration officials seeking to launder their escalation of the ingrained brutality of American immigration enforcement, and a media that had been committed to the excitement of the “border crisis” narrative long before Trump took office. The result is a chorus of voices accusing the Biden administration of being both too cruel and not cruel enough—whichever is most convenient.

Look at the images of migrant children being held in squalor in Border Patrol facilities and you will see an actual crisis: the continuing inhumane treatment of migrants, despite Biden’s insistence that his administration would pursue a more humane policy than his predecessor’s. And it is here where the Biden administration’s critics have the strongest case that its policies are responsible.

Republican Senator Mitt Romney of Utah has said that “allowing unaccompanied minors to stay in the U.S. will yield a flood of unaccompanied minors,” calling it a “de facto ‘child separation policy’.” There is a great deal of anecdotal evidence that allowing unaccompanied children to apply for asylum in the U.S. has resulted in families in Central America sending their kids to the U.S. But not only is allowing these children to stay and apply for asylum arguably the only option under American law, the alternative—simply turning unaccompanied children away at the border—is monstrous. Under crisis logic, any problem can be solved by an escalation of barbarism.

The crisis is not that these children—some 80 percent of whom, according to DHS, have relatives in the U.S.—are arriving and applying for asylum, which some of them will get and some of them won’t. They are children; they are not a threat to American sovereignty, security, or stability. The crisis is that the American system so frequently treats them like refuse.

Under American law, detainees are supposed to be held for no longer than 72 hours in Border Patrol facilities, which are not equipped for long-term detention. When the number of migrants arriving at the border rises significantly, those facilities are quickly overwhelmed, leading to the horrific conditions seen in recently published photographs. The immigration-detention system has grown rapidly in the past two decades, even as the number of apprehensions has gone down—the result of policy makers’ decision to invest in detention in a quixotic quest to “secure” 2,000 miles of territory without addressing the factors driving migration.

This quest has been bipartisan, but the prior administration pursued it to new levels of callousness. As one immigrant-rights advocate told me in 2019, “There were definitely parts of the Obama program that did similar—and, in fact, some of the same—things ... But this all-encompassing skepticism of asylum seekers fleeing violence—justifying cruel treatment, justifying changes in the law, and justifying overcrowding to the point of unsafe and deadly conditions—[is] of a scale and a type that we haven’t seen before.”

Whether the Trump administration escalated inhumane conditions through malice, incompetence, or both, the former president himself saw the resultant squalor as an asset to his

policies. “If Illegal Immigrants are unhappy with the conditions in the quickly built or refitted detention centers, just tell them not to come. All problems solved!” he tweeted in 2019.

In the 1980s, according to a joint report on immigration detention by the ACLU, Human Rights Watch, and the National Immigrant Justice Center, the U.S. immigration system held only about 2,000 people a day, on average—this was not an era of open borders, the vast majority of people attempting to cross the border were swiftly turned away. From 2000 to 2016, the average daily number of detainees rose from about 20,000 to 32,985, most of whom were held in facilities run by Immigration and Customs Enforcement. Under the Trump administration, that number skyrocketed to an average of more than 50,000 people in 2019. “When CBP facilities are included,” the report noted, “the federal government has detained some 80,000 people at a time—far higher than the number detained in previous administrations.”

This was a policy choice, not an inevitability. In 2000, there were 1,676,438 apprehensions, according to CBP’s statistics. In 2019, during the last “border crisis,” there were 859,501. America has the largest system of immigration detention in the world, because this is the course policy makers have chosen.

Under the current system, unaccompanied children are meant to be transferred to institutions managed by the Department of Health and Human Services, which then places them with a family member or guardian as soon as it can find one. But the sheer number of unaccompanied children arriving—close to 15,000 are now reportedly in the custody of various agencies—has overwhelmed some facilities, leading to migrants being held in disgraceful conditions the Biden administration vowed but failed to prevent.

“You don’t just release young people on this side of the border without checking out a sponsor and making sure that they will be safe, and that they will be taken care of when they are admitted to the United States,” Meissner told me. “The difficulty continues to be with the Border Patrol facilities, which are more like holding cells.”

None of this justifies the mistreatment of migrants under this administration or prior ones. But the fact that the Trump administration believed inhumane conditions would make its approach more effective, and the current one sees them as a problem to be fixed, is a relevant distinction.

“These are long-standing problems with CBP—committing horrific abuses on kids, on pregnant people, on anybody in their custody—but they all got turned up to the highest level of cruelty under the Trump administration, and they got a lot more spotlight,” Shah told me. “It’s not that the last four years, CBP and ICE were told by the Trump administration to do bad things, and then they did that ... CBP and ICE did the things that they had been doing, and they were given a longer leash to do them.”

Shah and others have argued that the current massive system of immigration detention is unnecessary—that the law allows most detainees, excluding the ones likely to pose a flight risk or a threat to public safety, could be released during their immigration proceedings. The current system is a relatively recent invention, and another course could be chosen.

But just as the detention system has grown, so has the power of those that maintain an interest in that system’s expansion. That includes private prison contractors trying to fill beds as the incarcerated population shrinks, unions representing ICE and Border Patrol agents, and the politicians whose constituents are employed in such industries and who benefit from their

contributions. For these factions, every immigration problem is a nail, and the solution is always a hammer. Their advocacy has done a great deal to shape a policy conversation where the only proposals taken seriously are those to expand that very system, or to make it more punitive.

This logic is not just false; it fails its own premises. The idea that cyclical migration patterns could not be disrupted through brute force was once accepted across the political spectrum. Indeed, despite some crucial disagreements, the consensus for how to fix America's immigration problem was once so broad that it included everyone from Karl Rove to Richard Trumka. The general idea was to create legal channels for immigrant labor, and legalize the status of those already here so that they are not exploited and do not unfairly compete against native workers. This would undercut the criminal cartels that profit from human smuggling, by shifting the incentives of their prospective clientele. People who believe they have a good chance to come to this country legally are less likely to risk their lives—or those of their children—with smugglers.

Stricter enforcement was also a part of this strategy, but over the past decade and a half, it is the only element that has actually been pursued, for both political and structural reasons. Right-wing rebellions against immigration moderates in 2006 and 2013, combined with Trump's rise, have neutralized any political incentive for Republican legislators to support more comprehensive solutions. Contrary to the histrionics of the Ivy League "populists" seeking to follow in Trump's footsteps, corporate America is perfectly content with the status quo, which ensures a frightened and exploitable undocumented workforce. It does not fear a militarized border or strict enforcement, from which it can profit handsomely; it fears workers backed by the protections and solidarity of organized labor.

Solving the border issue solely through punitive measures is popular because it sounds simple and effective. Instead, because it does not work, it simply creates demand for more and harsher border-security measures, which also cannot stem migration. Restrictionist politicians can then run forever on proposing solutions to a dilemma their methods cannot solve, their calls for further brutality only growing louder and more callous as the matter continues to fester. Immigration policy becomes a competition between the parties over which one can be more brutal—terrain on which the party of Trump is eager to fight.

"The border will be much more enforceable if there is a new immigration law that is up to date that makes it possible for people to come to the country legally," Meissner told me. "Just responding through border measures is never going to be sufficient."

And yet, the enforcement-only approach is palatable to many Americans in part because of the nature of many news stories about a crisis at the border, which amplify the arguments of immigration restrictionists that America's militarized border enforcement is all that stands between the United States and annihilation.

Conservative media have eagerly seized on the situation at the border, describing it in the same apocalyptic terms that they employed during the Trump administration. The Fox News host Tucker Carlson accused the Biden administration of attempting to "import as many new citizens as we can in the United States to replace all the disobedient ones who didn't vote for us," a PG-13 paraphrase of the racist "white genocide" conspiracy theory. Others on the network sought to blame the small number of migrants being allowed into the country for the rise in COVID-19 infections in states lifting restrictions. Republican gains with Latino voters in Florida and along

the Rio Grande Valley in the 2020 elections have yet to dampen the enthusiasm for genetic determinism in right-wing media.

But it would be a mistake to assume that conservative media by itself is driving the conversation. The “border crisis” narrative follows an old and cherished formula that existed long before Trump came on the scene. Media bias is rarely as simple as mere partisanship or ideology—the strongest bias in media is toward there being a story at all. And in the case of immigration, the “border crisis” is the story the media like to tell over, and over, and over, to massive, if unintended, political effect.

In their 2015 book, *White Backlash*, the political scientists Marisa Abrajano and Zoltan Hajnal found that “positive stories on immigration are relatively rare. Even in the liberal bastion of the *New York Times*, negative stories on immigration outnumber positive articles by three to one,” noting that “immigration coverage may have real, widespread effects because it is so lopsided, and immigration may be shifting white America to the right because that one-sided coverage is so negative.” Abrajano and Hajnal are not picking on the *Times*, but using it as a representative example; their point is that although one outlet “may not be powerful enough to influence the partisan balance of power on its own ... the media as a whole appears to be capable of doing just that.”

Although there were many dedicated immigration reporters at the *Times* and other outlets who did fantastic work uncovering Trump-era abuses, many others accepted the president’s framing. In the lead-up to the 2018 midterm elections for example, Trump successfully baited the political press into saturation-level coverage of a supposed crisis posed by a migrant caravan, which abated as soon as the midterms were over. Whatever the intentions of individual reporters or outlets, in the aggregate, Americans are and have been regularly faced with coverage that reinforces false Trumpian rhetoric of an imminent “invasion.”

To the extent that the United States has a border crisis, it is an enduring one: the mistreatment of human beings in American custody. That problem is resolvable, but only by the U.S. meeting its legal obligation to treat migrants humanely. Even the problem of migrant flows can be mitigated by fixing a byzantine and ineffective immigration system, and addressing root causes in migrants’ nations of origin. But if the “border crisis” is the American government’s failure to be as cruel as possible, there is no solution worth pursuing, and none that would actually work.