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Busing and Flights of Migrants by GOP Governors Mark a New Twist in State Intervention on Immigration

SEPTEMBER 28, 2022 POLICY BEAT | By Muzaffar Chishti and Julia Gelatt



Texas Governor Greg Abbott speaks before a briefing on border security. (Photo: Nathan Lambrecht/DHS)

Republican governors' surprise dropoffs of thousands of asylum seekers and other migrants in Democratic-led cities has escalated and reframed a simmering political feud over immigration. While states have sparred with the federal government over enforcement and border security for years, their actions were chiefly to advance policies of their own or challenge federal policy through litigation, including over so-called sanctuary cities and the border wall. The busing and, in one instance, flights of migrants from Texas and Arizona have transformed the quarrel into one pitting Republican state officials against state- and city-level Democrats in the middle of an election season, exacerbating a deep red- and blue-state divide and bringing serious consequences for migrants, many of whom are asylum seekers. At least one governor in a blue state, California, has also joined the fray, urging a Justice Department investigation into whether some of the migrant transports constitute kidnapping. Where once state leaders directed their immigration complaints at the federal government, this episode raises questions whether a new era has begun:

state-on-state fights over immigration.

The outcomes of the operations have not been entirely what one might have expected. True, the transportation of thousands of asylum seekers and other migrants encountered at the Texas-Mexico border has yielded some political capital for Republican Governors Greg Abbott of Texas and Ron DeSantis of Florida. Both are seeking re-election in November, are seen as possible presidential candidates in 2024, and are eager to goad President Joe Biden for what they describe as a failure to secure the U.S. border. (Arizona Governor Doug Ducey [R] has also engaged in busing but is term-limited and not currently running for other office.) There maybe unintended political backlash, however, particularly for the DeSantis flights of 48 Venezuelans to the elite vacation island of Martha's Vineyard, given support in some Republican corners for dissidents fleeing leftist authoritarian regimes in Venezuela as well as Cuba and Nicaragua, other countries from which many migrants have recently come. Public opinion polling suggests just one-third of Americans support the strategy, including only about half of Republicans. For some, the dropoffs have stirred uncomfortable reminders of the reverse freedom rides of 1962, when segregationists paid to send Black Americans from the South to northern destinations, including Cape Cod near Martha's Vineyard, to embarrass political leaders.

Whatever the political intent of these transports, the trips have brought into focus the hardships migrants face on their way to the U.S. border and the strained reception capacity of border communities and organizations that initially receive them. They also have given Democratic leaders a taste of the challenges that border states face. While migrants long have spread across the United States after crossing the border without authorization, the process normally happens organically, quietly, and gradually. The buses have instead brought migrants to these cities in an orchestrated, visible, and deliberately disorderly way, generating challenges for cities trying to meet the newcomers' humanitarian needs and raising the visibility of any failures to do so. In generating this chaos, the busing scheme has succeeded at least in showcasing the challenges at the border, particularly as unauthorized immigration reaches record levels, at more than 2.1 million encounters as of August, 11 months into the fiscal year.

The transports might also yield unexpected benefits for migrants, with a free ride bringing new arrivals closer to family and friends and moving asylum seekers to locations where immigration courts have had far higher asylum grant rates. Service providers in border cities, which have been struggling to receive the rising number of migrants and support transportation for those who cannot afford bus or plane tickets, may also benefit from the state-sponsored relocations.

This article examines states' strategies of relocating thousands of migrants from the border to interior U.S. cities, and the consequences.

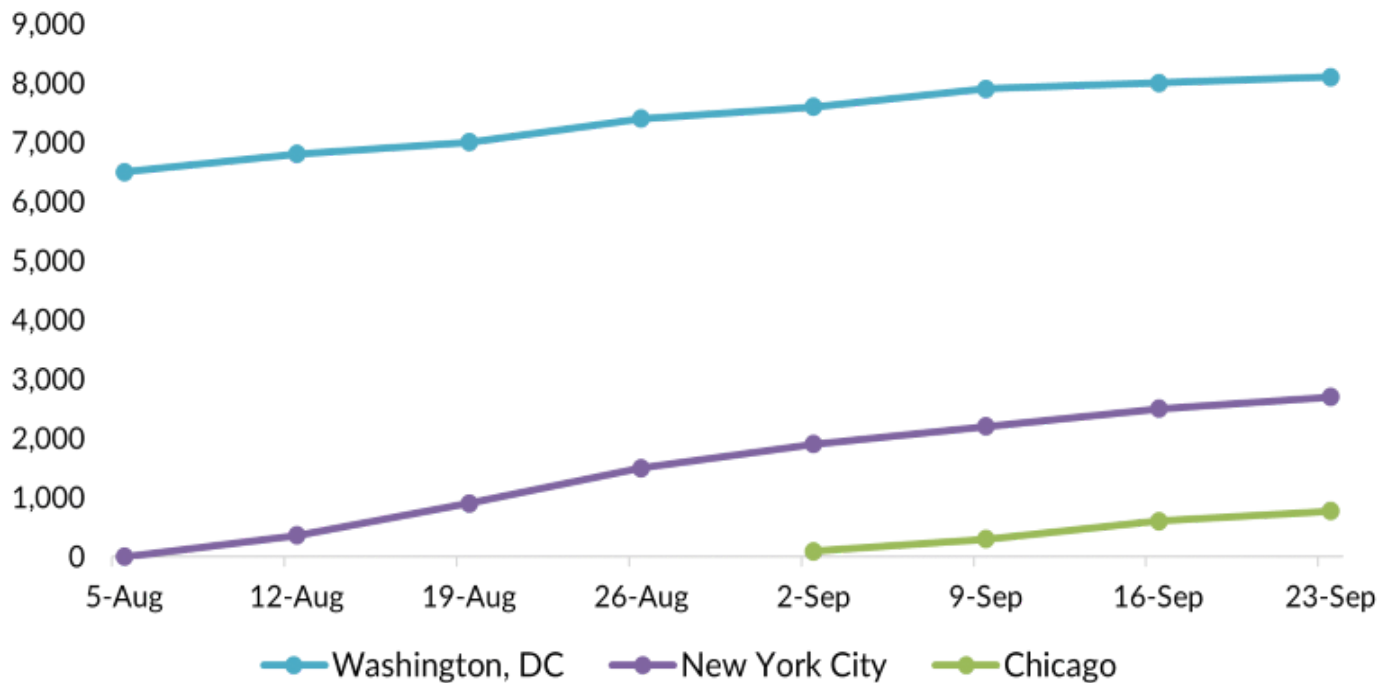


A New Strategy

As of mid-September, more than 13,000 migrants had been bused from Arizona and Texas to Washington, DC, New York, and Chicago; the nation's capital received more than 8,100 individuals from Texas and about 1,800 from Arizona, New York City received more than 2,700 from Texas, and Chicago more than 770 from Texas.

The busing plan grew out of Abbott's Operation Lone Star, which has spent more than \$4 billion in state funds seeking to deter unauthorized migration by deploying National Guard soldiers and state troopers to the border, constructing border fencing and temporary barriers, and arresting some arriving migrants and prosecuting them under state law. The first bus was sent by Abbott to Washington, DC, on April 13 reportedly bearing at least two dozen migrants mostly from Colombia, Cuba, Nicaragua, and Venezuela. Ducey followed suit with his own buses the following month. In August, Texas expanded its busing destinations to New York City and Chicago. Dozens of busloads have followed in the five months since.

Figure 1. Cumulative Number of Texas-Bused Migrants by Destination City, 2022



Note: Data are for the number of total migrants sent by Texas, which only started reporting figures publicly in August. Some individuals may have exited in other locations before reaching their destination cities.

Sources: Migration Policy Institute (MPI) calculations based on press releases from the Office of the Texas Governor, available online.

Migrant Screening and Busing Logistics

Box 1. The Legal Process for Border Arrivals

Unauthorized migrants who are allowed into the United States by U.S. Customs and Border Protection (CBP) are typically placed into removal proceedings before an immigration judge. Once in proceedings they have a right to apply for asylum or other protections as a defense against removal. Immigration court proceedings can stretch for years. Asylum applicants are eligible to apply for work authorization and can receive it six months after their asylum application is filed. Until their immigration court case has reached a final outcome, migrants cannot be removed from the United States.

When asylum seekers and other migrants arrive to the U.S.-Mexico border, they are screened and processed by U.S. Customs and Border Protection (CBP). Some are turned back to Mexico under the pandemic-related Title 42 expulsions policy or detained until they can be expelled by plane. Others are put into expedited removal, meaning they are quickly processed for return to their origin country, unless they assert a claim for humanitarian relief under U.S. law. Especially when border arrivals are high, many migrants are released into the United States with a notice to appear in immigration court or a notice to report to a U.S. Immigration and Customs Enforcement (ICE) office for further processing. In many cases they are also enrolled in a cellphone-based tracking program.

Typically, migrants released from custody at the border are transported by CBP to nonprofit organizations in border communities that provide basic assistance and help arrange onward transportation. In many cases, migrants (or their families) pay for buses or flights to other U.S. destinations, but the organizations sometimes cover costs for those who cannot afford it.

Smoother Rides for Migrants, Big Tabs for State Taxpayers

The state-funded buses now provide an alternative. Texas and Arizona work with local nonprofit service providers in Eagle Pass and Del Rio, Texas, and Yuma, Arizona to connect migrants with the state-funded buses. From the perspective of overwhelmed border city officials and

organizations, the buses provide a useful resource, even if the underlying politics might be at odds. Migrants volunteer to take the buses and sign waivers consenting to travel. Arizona's contract explicitly states that migrants are not in the bus company's custody and are free to depart at any point along the route; many have also reportedly exited the Texas buses along the way. However, opposition from local officials in Dade County, Georgia and Chattanooga, Tennessee prompted buses to avoid stopping there.

Box 2. Possible Concerns over Addresses

When processing migrants, CBP registers an address where court documents will be sent to the individuals, which also determines the immigration court where their case will be heard. For migrants without a fixed address, CBP will often list a homeless shelter or a migrant-serving nonprofit organization in the intended destination city. Catholic Charities in New York City, for example, between mid-July and mid-August received 300 notices to appear in immigration court for recent border arrivals with whom they did not have a prior relationship, because their address was listed on migrants' paperwork.

The bus dropoffs have brought attention to this issue and the concern that migrants might not receive crucial documents or be required to appear at an ICE office far from where they ultimately end up. Many of the asylum seekers flown to Martha's Vineyard reportedly had addresses listed in Texas, Washington State, and other places far from Massachusetts, and immigration court dates just a few days after their dropoff on the island.

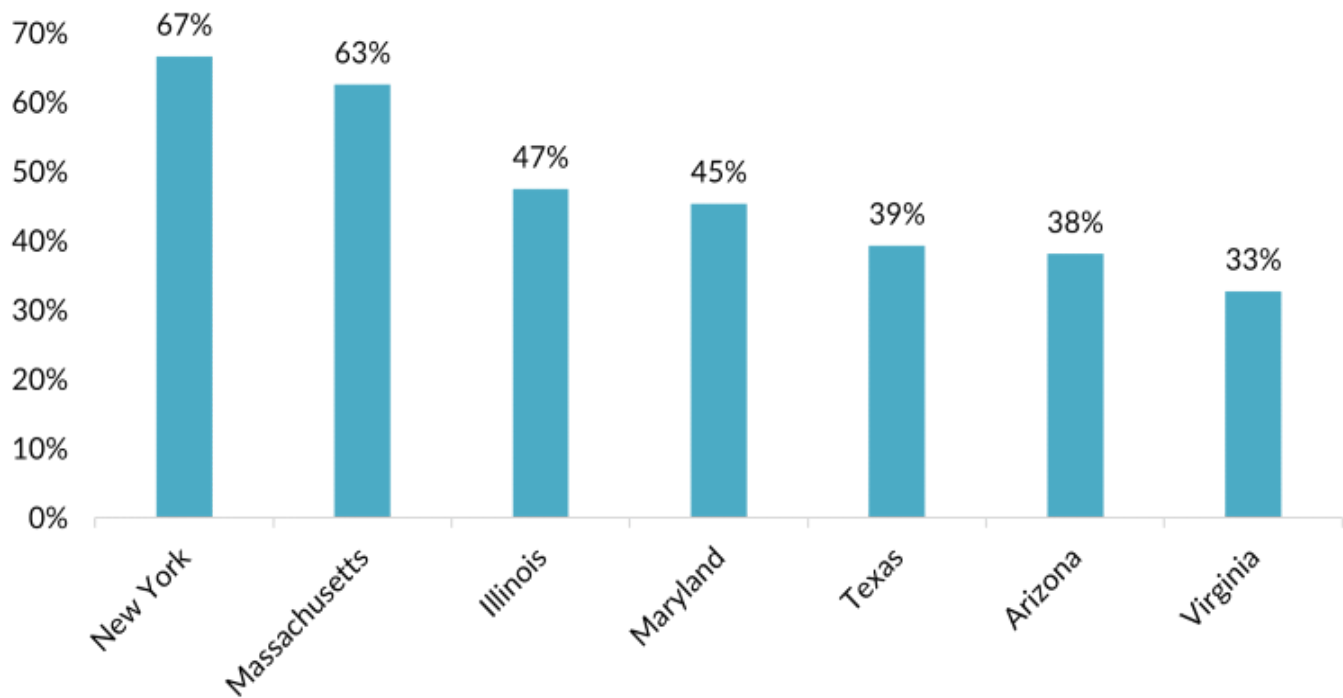
A different process seems to have occurred for migrants flown by Florida to Martha's Vineyard in September. The migrants claim to have been deceived and have filed suit, saying they were told they were headed to Boston or New York, where housing and work awaited them. Instead, they were flown to a small tourist haven with limited migrant services and, reportedly, thousands of miles away from the cities where they were required to show up for immigration court dates and ICE check-ins (see Box 2).

The buses and flights come at high cost to state taxpayers. As of mid-August, Texas had spent \$12.7 million on buses, using primarily state funding and just over \$300,000 in private donations—a cost of over \$1,400 per migrant bused. Arizona spent \$3 million on busing over the first three months, bringing the cost to \$82,000 per bus or \$2,200 per migrant. Arizona officials say the costs includes bus rental, meals, two emergency medical technicians (EMTs), and multiple drivers for the multiday trip. Florida, which also hired a videographer to document the transports, appears to have paid \$615,000 for the two flights to Martha's Vineyard, at a cost of \$12,800 per migrant.

An Unexpected Upside?

Beyond facilitating migrants' journey into the U.S. interior, the buses are aiding them in a different way, channeling them to places where they are more likely to be granted asylum. The rates of asylum recognition in immigration court can vary dramatically by jurisdiction. In fiscal year (FY) 2021, immigration courts in New York approved 67 percent of asylum cases, while those in Texas granted just 39 percent (see Figure 2).

Figure 2. Rates of Asylum Case Approval in U.S. Immigration Court by Location, FY 2021



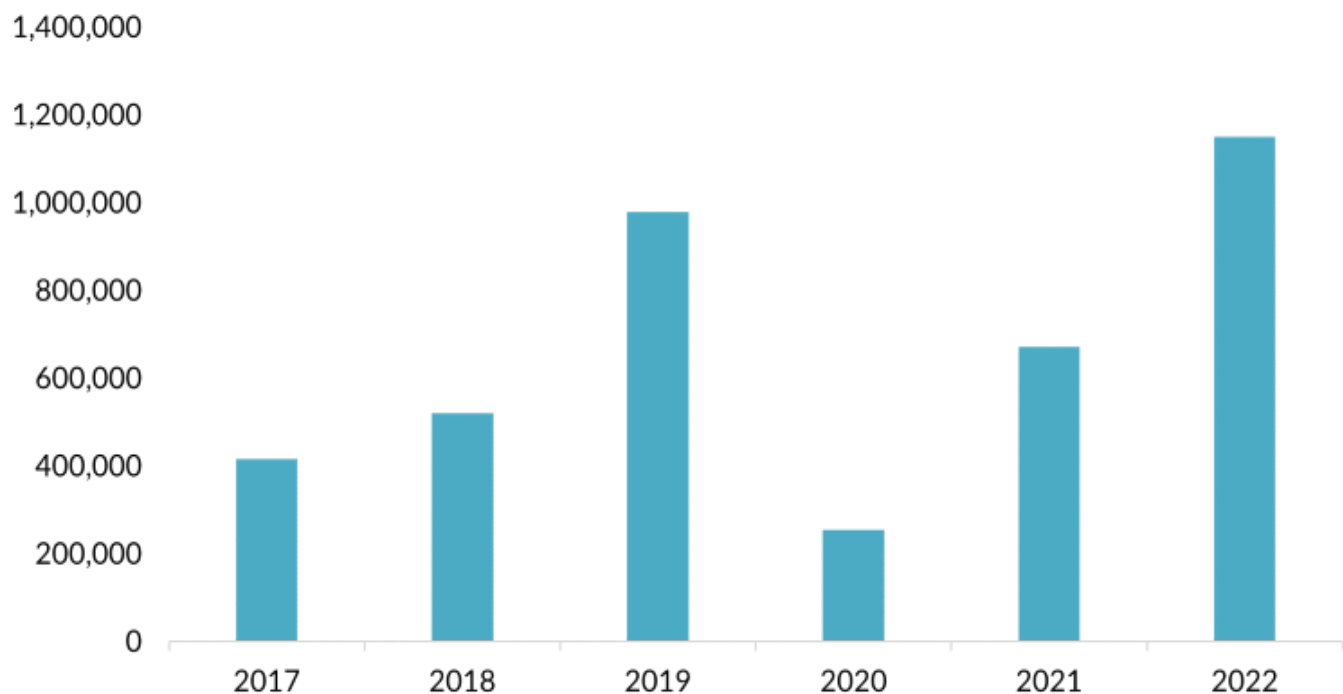
Note: Percentages are for the share of cases granted asylum or other forms of relief.

Source: Transactional Records Access Clearinghouse (TRAC), "Asylum Decisions," updated August 2022, available online.

Extreme Border Pressure

The busing operations started amid record numbers of encounters of unauthorized migrants. Of the more than 2.1 million encounters along the U.S.-Mexico border through the first 11 months of FY 2022, 1,149,000 did not result in expulsion under Title 42, a dramatic increase from the 671,000 such incidents in FY 2021. The increase in border encounters was concentrated in Texas and Arizona.

Figure 3. Title 8 Apprehensions and Inadmissibles at the U.S.-Mexico Border, FY 2017-22



Note: In addition to apprehensions and inadmissibles processed under Title 8, U.S. Customs and Border Protection (CBP) in March 2020 began expelling certain migrants under the Title 42 public-health order implemented during the COVID-19 pandemic. The data here are for encounters along the Southwest border that did not result in expulsion. Figures for fiscal year (FY) 2022 run through August.

Source: U.S. Customs and Border Protection, "Southwest Land Border Encounters," accessed September 28, 2022, available online.

In certain areas the traffic has been particularly high. The number of border encounters (including those expelled under Title 42) in the Del Rio, Texas border sector nearly doubled from 216,000 during the first 11 months of FY 2021 to 429,000 during the same period in FY 2022. Meanwhile, encounters in Arizona's Yuma sector more than tripled, from 92,000 to 284,000. Service providers have felt the impact acutely; the Val Verde Border Humanitarian Coalition in Del Rio reported seeing 1,000 or more migrants per week in early September, compared to about 25 per week in 2019.

The nationalities of arriving migrants have also shifted, affecting how the U.S. government can respond. Far more are coming from Cuba, Nicaragua, and South America. For the first 11 months of this fiscal year, 75 percent of arrivals had been from countries other than Mexico, El Salvador, Guatemala, and Honduras—a sharp increase over the 18 percent seen in FY 2020 and 44 percent in FY 2021. Cubans, Colombians, Nicaraguans, and Venezuelans are rarely expelled under Title 42 and, in the absence of normal diplomatic with, Cuba, Nicaragua, and Venezuela, it is nearly impossible to send back nationals of those countries. As a result, these four countries seem to account for a large portion of the asylum seekers and other migrants bused from Texas. Texas has not released data on the nationalities of the migrants it has sent on buses. Arizona has, and as of early August, 57 percent of its bus passengers were from Colombia, 16 percent from Peru, and 12 percent from Venezuela, according to data from the governor's office. All 48 migrants flown to Martha's Vineyard were Venezuelan.

Box 3. FEMA Funding for Migrant Assistance

Congress appropriated \$150 million for fiscal year (FY) 2022 to reimburse for humanitarian assistance to migrants through the Federal Emergency Management Agency (FEMA) Emergency Food and Shelter Program, which assists people experiencing hunger or homelessness.

Funding is available to nonprofit, faith-based, and government organizations. If approved, the organizations can bill FEMA on a quarterly basis for past expenses and ask for prospective funds. This funding mechanism first opened in FY 2019, as part of an emergency spending bill to address high numbers of border arrivals that year and has been available since.

Strain on Border Cities, as El Paso Charters Its Own Buses

Border cities have strained to manage the increased arrivals, and the dynamic transcends clear political lines. El Paso, led by a Democratic mayor, began quietly chartering its own buses to New York City in August, and later to Chicago, in response to overcrowded shelters and the arrival of large numbers of migrants without networks in the United States. The move was not novel; in prior years the city had chartered buses to transport migrants to nonprofits in Dallas and Denver that assisted in arranging onward transportation.

Under normal circumstances, the Border Patrol releases migrants processed near El Paso to a network of shelters run by nonprofits, but one of the border's largest migrant shelters closed in August, due to high operating expenses, difficulties securing volunteers, and limited support from city and county leaders. When shelters and processing centers are full, CBP drops migrants near the bus station and families sometimes sleep on the street, though the city works to offer hotel rooms, particularly to families.

As of this writing, El Paso had sent more than 80 buses with thousands of migrants primarily to New York and Chicago and had earmarked \$6 million to provide up to five bus trips per day. Federal Emergency Management Agency (FEMA) reimburses the city for the charters. City officials say they coordinate with officials and nonprofits in the destination communities before sending buses—unlike the flights and busing

arranged by DeSantis and Abbott. There have been reports that Texas has required busing operators to sign nondisclosure agreements, forbidding them from alerting city and nongovernmental officials in destination communities of their arrival.

Major Cities Get a Taste of the Border's Challenges

If the governors' goal was to demonstrate the challenge of spontaneously arriving migrants, they have succeeded. The destinations have viewed the arriving busloads as a source of frustration. City leaders have expressed that they are overwhelmed, pleaded with the federal government for assistance (in the case of Washington, DC, twice unsuccessfully seeking National Guard deployment), and appeared dissatisfied with the slow pace of support. The Texas buses arrive unannounced, sometimes in the middle of the night or in front of Vice President Kamala Harris's residence, and state officials have refused to share information on how many people are on them and what special needs they may have. Arizona's busing is more coordinated; migrants are pre-screened for connections in the Northeast and nonprofit service providers in Maryland and Washington, DC receive detailed passenger manifests ahead of time.

The response from the Washington, DC government was initially limited. Mutual aid organizations and immigrant-serving nonprofits did most of the work meeting migrants' basic needs such as medical care, food, clothing, and shelter. In September, Mayor Muriel Bowser (D) declared a state of emergency, which freed up \$10 million in local funds (for which the city will seek federal reimbursement) and pledged to create an Office of Migrant Services.

In New York City, the initial response was likewise led by volunteers. More recently, the city Office of Immigrant Affairs established offices in the Port Authority where buses have been arriving, staffed by the city and local nonprofit organizations, offering medical help, COVID-19 tests, food, clothes, phones, legal aid, and transportation assistance. A new Asylum Seeker Resource Navigation Center, staffed by Catholic Charities, connects newly arrived families to city services and resources. The city has rented thousands of hotel rooms, opened dozens of emergency shelters, and is constructing winterized, hangar-like tents for short-term stays.

In Chicago, city, state, and nonprofit staff have worked together to provide services to migrants upon arrival. Migrants go to a local religious organization for intake and some have been sent to hotels in the suburbs for temporary housing, although regional mayors have protested that theirs are not "sanctuary cities" and that they were not notified of the migrants' coming. On September 14, Illinois Governor J.B. Pritzker (D) signed an emergency declaration to facilitate coordination among regional governments and activated 75 members of the Illinois National Guard.

Two critical questions are how many migrants will stay in each city long term and how many have support from family and friends, rather than relying on governments and nonprofits for long-term support. Service providers in Washington, DC estimated in early September that about 85 percent of migrants quickly head elsewhere, while data collected by Arizona early August showed that 20 percent of those sent to Washington, DC were ultimately headed to New Jersey, 20 percent to Florida, and 7 percent to New York State. New York City's data suggest that many new migrants—not just those bused to the city—are utilizing the city's shelters on a longer-term basis.

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Legal Challenges Begin Brewing

Along with public opposition and political outrage, legal action against the Republican governors has been ramping up. Florida state Sen. Jason Pizzo (D) filed a lawsuit claiming that funding for the flights violated state law because the migrants were picked up in Texas, not Florida; it seeks to block DeSantis from spending any more state money on such flights. In Massachusetts, legal advocates on September 20 filed a federal lawsuit against DeSantis and other Florida officials on behalf of the Venezuelans flown to Martha's Vineyard, alleging violations including those of the 4th and 14th Amendments to the Constitution. The outcome may ultimately depend on establishing whether the migrants voluntarily agreed to take the flight.

Elsewhere, California Governor Gavin Newsom (D) has urged the Justice Department to investigate whether some of the operations would support charges of kidnapping and serve as a predicate offense for charges under the Racketeer Influenced and Corrupt Organizations Act (RICO) statutes, which were designed to fight organized crime. In Texas, Bexar County Sheriff Javier Salazar (D)—whose county includes San Antonio, where the DeSantis flights to Martha's Vineyard originated—has launched his own investigation into whether the migrants were “lured under false pretenses and exploited and hoodwinked.” State and local leaders in Illinois, New York, and elsewhere are also reportedly looking into whether there might be any criminal liability.

Federal Response Has Been Muted—So Far

The Biden administration at first had little response to the Texas and Arizona busing schemes. Then White House Press Secretary Jen Psaki said in April it was “nice the state of Texas is helping them get to their final destination.” Homeland Security Secretary Alejandro Mayorkas only mildly criticized Abbott's lack of coordination with federal authorities. However, the messaging has grown sharper as the governors have ramped up their tactics. “Republican governors... using migrants as political pawns is shameful, is reckless, and just plain wrong,” White House Press Secretary Karine Jean-Pierre said recently.

Even some fellow Republican governors have raised at least slight concern. “I don't like using political stagecraft to make a point,” Arkansas Governor Asa Hutchinson (R) said in a September 20 keynote conversation during the annual immigration conference put on by the Migration Policy Institute, Georgetown University Law Center, and the Catholic Legal Immigration Network, Inc. While he noted longstanding state and local involvement with the federal government on immigration, he called for greater coordination and added: “The governors have to be a part of the solution.”

Department of Homeland Security (DHS) officials have reportedly lobbied to transport migrants released from CBP custody to cities beyond the border to relieve pressure there. But the White House has so far resisted these calls, instead pushing Mexico to accept more migrants from Cuba, Nicaragua, and Venezuela expelled under Title 42.

The administration is also developing some alternatives for migrants to come to the United States through legal channels, although these solutions are unlikely to be enough to stem the flows. The State Department is working on ramping up refugee resettlement for Nicaraguans and Venezuelans who fled their countries and reside elsewhere in Latin America. Those who come to the United States as refugees can access resettlement services including housing placements, access to short-term cash assistance, food assistance, and public health insurance, and can adjust to permanent residence after a year in the country. The U.S. embassy in Havana will also resume full immigrant visa processing in 2023, for the first time since 2017, and will increase staffing for processing those eligible for the Cuban Family Reunification Parole Program, which allows people waiting in line for family sponsorship green cards to do so from inside the United States.

Ripple Effects

A particular challenge that the busing tactic makes clear is that many asylum seekers do not have family or other sources of support in the United States, leaving cities struggling to support people in need. This issue compounds existing challenges of expensive housing and substantial homeless populations in cities such as New York. The communities that respond generously may also be inadvertently generating a pull factor for other migrants without support networks; some newcomers have said they saw through social media that New York City would take care of them if they made it there, even though the city is struggling to meet the arrivals' needs.

On the flip side, open antagonism between the states is peaking. Liberal cities far from the border have been given a taste of the challenges that border communities face. And northern politicians are now joining calls from border states for more federal assistance—and, in some cases, legal action. With the massive new attention to the border engendered by round-the-clock media coverage of the governors' political theater, the Biden administration is facing significant new pressures to respond.

The current situation at the U.S.-Mexico border has exposed many of the vulnerabilities of the U.S. reception system for asylum seekers and other migrants arriving without authorization. As the globe emerges unevenly from the COVID-19 pandemic, pressure on the U.S. border has mounted to record levels. Yet the challenges are rarely shared evenly across the country. The uneven costs that rising levels of migrant arrivals bring—both for states that initially receive them and states where they settle—has proven increasingly problematic. Viewing unauthorized arrivals as primarily the responsibility of border states feeds animosity between the states and widens the divide between parts of the country that are growing further apart socially, culturally, and politically. The busing strategy has been rightly criticized by opponents as a political stunt, but it is also a reaction to an undeniable on-the-ground reality.

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