

RESOLUTION OF INQUIRY DIRECTING THE SECRETARY OF HOMELAND SECURITY TO PROVIDE CERTAIN DOCUMENTS IN HIS POSSESSION TO THE HOUSE OF REPRESENTATIVES RELATING TO IMMIGRATION ENFORCEMENT AND BORDER SECURITY

SEPTEMBER 22, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

ADVERSE REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 1241]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 1241) of inquiry directing the Secretary of Homeland Security to provide certain documents in his possession to the House of Representatives relating to immigration enforcement and border security, having considered the same, report unfavorably thereon with an amendment and recommend that the resolution not be agreed to.

CONTENTS

	Page
Purpose and Summary .....	2
Background and Need for the Legislation .....	3
Hearings .....	4
Committee Consideration .....	4
Committee Votes .....	4
Committee Oversight Findings .....	6
Committee Estimate of Budgetary Effects .....	6
New Budget Authority and Congressional Budget Office Cost Estimate .....	6
Duplication of Federal Programs .....	6
Performance Goals and Objectives .....	6
Advisory on Earmarks .....	6
Section-by-Section Analysis .....	6
Minority Views .....	7

The amendment is as follows:

Strike all after the resolving clause and insert the following:

That the Secretary of Homeland Security of the United States is directed to transmit to the House of Representatives, not later than fourteen days after the date of

adoption of this resolution, copies of any document, record, audio recording, memorandum, call log, correspondence (electronic or otherwise), or other communication in his possession, or any portion of any document, record, audio recording, memorandum, call log, correspondence (electronic or otherwise), or other communication, that refers or relates to the following:

(1) The number of illegal aliens on the no-fly list or the Federal Bureau of Investigation's Terrorist Screening Database who have been encountered by United States Government personnel at the southwest border, between ports of entry since January 20, 2021.

(2) The number of illegal aliens on the no-fly list or the Federal Bureau of Investigation's Terrorist Screening Database who have been encountered by United States Government personnel at the southwest border, between ports of entry since January 20, 2021, and were subsequently released into the interior of the United States.

(3) The nationality of, and a description of the conduct for which, each alien on the no-fly list or the Federal Bureau of Investigation's Terrorist Screening Database who has been encountered by United States Government personnel at the southwest border, between ports of entry, and subsequently released in the United States, was placed on the no-fly list or the Federal Bureau of Investigation's Terrorist Screening Database.

(4) Of the aliens described in paragraph (1) who were placed into U.S. Immigration and Customs Enforcement detention, the length of detention and location of detention for each alien.

(5) Of the aliens described in paragraph (1), the number expelled pursuant to section 362 of the Public Health Service Act (42 U.S.C. 265), ordered removed, granted voluntary departure, removed pursuant to expedited removal, removed pursuant to a reinstated removal order, and the country to which each was removed.

(6) Of the aliens described in paragraph (1), the number referred to the Department of Justice for prosecution under section 275(a) or 276(a) of the Immigration and Nationality Act (8 U.S.C. 1325(a); 8 U.S.C. 1326(a)).

(7) The current status of each case for aliens described in paragraph (1) who are still in the United States.

### **Purpose and Summary**

H. Res. 1241 is a resolution of inquiry directing the Secretary of Homeland Security to provide certain documents in his possession to the House of Representatives relating to immigration enforcement and border security.

Representative Tom McClintock (R-CA) introduced the resolution on July 20, 2022, and it currently has no cosponsors.

H. Res. 1241 directs the Secretary of Homeland Security of the United States to transmit to the House of Representatives, not later than fourteen days after the date of adoption of the resolution, copies of any document, record, audio recording, memorandum, call log, correspondence (electronic or otherwise), or other communication in his possession, or any portion of any document, record, audio recording, memorandum, call log, correspondence (electronic or otherwise), or other communication, that refers or relates to the following:

(1) The number of "illegal aliens" on the no-fly list or the Federal Bureau of Investigation's Terrorist Screening Database who have been encountered by United States Government personnel at the southwest border, between ports of entry since January 20, 2021.

(2) The number of "illegal aliens" on the no-fly list or the Federal Bureau of Investigation's (FBI) Terrorist Screening Database who have been encountered by United States Government personnel at the southwest border, between ports of entry since January 20, 2021, and were subsequently released into the interior of the United States.

(3) The nationality of, and a description of the conduct for which, each noncitizen on the no-fly list or the FBI's Terrorist Screening Database who has been encountered by United States Government personnel at the southwest border, between ports of entry, and subsequently released in the United States, was placed on the no-fly list or the FBI's Terrorist Screening Database.

(4) Of the individuals described in paragraph (1) who were placed into U.S. Immigration and Customs Enforcement detention, the length of detention and location of detention for each alien.

(5) Of the individuals described in paragraph (1), the number expelled pursuant to section 362 of the Public Health Service Act (42 U.S.C. 265), ordered removed, granted voluntary departure, removed pursuant to expedited removal, removed pursuant to a reinstated removal order, and the country to which each was removed.

(6) Of the individuals described in paragraph (1), the number referred to the Department of Justice for prosecution under section 275(a) or 276(a) of the Immigration and Nationality Act (8 U.S.C. 1325(a); 8 U.S.C. 1326(a)).

(7) The current status of each case for individuals described in paragraph (1) who are still in the United States.

## **Background and Need for the Legislation**

### I. BACKGROUND ON RESOLUTIONS OF INQUIRY

Under the rules and precedents of the House, a resolution of inquiry is used to obtain information from the executive branch. A resolution of inquiry is directed at the President of the United States or the head of a cabinet-level agency, requesting facts within the control of the executive branch.<sup>1</sup> As a "simple resolution," designated by "H. Res.," a resolution of inquiry does not carry the force of law. "Compliance by the executive branch with the House's request is voluntary, resting largely on a sense of comity between co-equal branches of government and a recognition of the necessity for Congress to be well-informed as it legislates."<sup>2</sup>

House Rules afford resolutions of inquiry a privileged parliamentary status. A member files a resolution of inquiry like any other legislation. The resolution is then referred to the proper committee of jurisdiction and the committee may: (1) report the resolution either favorably or unfavorably; or (2) choose not to report the resolution. If the committee does not report the resolution to the House within 14 legislative days of its introduction, however, a motion to discharge the resolution from committee can be made on the House floor.<sup>3</sup>

### II. NEED FOR THE LEGISLATION

This resolution is unnecessary. The Minority has had no problem obtaining briefings or information on this issue. Just last year, Minority Leader Kevin McCarthy asked for, and received, a classified

<sup>1</sup> Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947–2011*, CONG. RES. SERV. R40879 (May 15, 2012).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> House rule XIII, clause 7.

briefing related to allegedly concerning individuals apprehended along the U.S.-Mexico border.<sup>4</sup>

Further, in July, the Biden Administration began posting some of the requested data publicly on the Customs and Border Protection (CBP) website. Currently on CBP's website, the public can see the number of individuals encountered by Border Patrol who are on the FBI's Terrorist Screening Database for the last five and half fiscal years.<sup>5</sup> This fiscal year, sixty-six people on the Screening Database have been encountered by Border Patrol on the Northern and Southern border.<sup>6</sup>

### **Hearings**

For the purposes of clause 3(c)(6)(A) of House rule XIII, the Committee held no hearings on H. Res. 1241.

### **Committee Consideration**

On September 14, 2022, the Committee met in open session and ordered the resolution, H. Res. 1241, unfavorably reported with an amendment in the nature of a substitute, by a rollcall vote of 19 to 16, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of House rule XIII, the following rollcall votes occurred during the Committee's consideration of H. Res. 1241:

1. A motion to unfavorably report H. Res. 1241, as amended, was agreed to by a rollcall vote of 19 to 16. The vote was as follows:

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<sup>4</sup> Brooke Singman, *McCarthy Briefed on Classified Memo About Terror Suspects Caught at Mexico Border: 'National Security Crisis,'* Fox News (May 18, 2021), <https://www.foxnews.com/politics/mccarthy-brief-classified-memo-suspected-terrorists-mexico-border-national-security>.

<sup>5</sup> *CBP Enforcement Statistics Fiscal Year 2022*, Customs and Border Protection (accessed Sep. 15, 2022), <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

<sup>6</sup> *Id.*

Roll Call No. 4

Date: 9/14/22

COMMITTEE ON THE JUDICIARY  
House of Representatives  
117<sup>th</sup> Congress

Subject: Motion to report H.Res. 1241 unfavorably to the House

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)			
Steve Cohen (TN-09)			
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)			
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)			
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)		✓	
Tom Tiffany (WI-07)		✓	
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)			
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)		✓	
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES.
TOTAL	19	16	

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

### **Committee Estimate of Budgetary Effects**

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

### **New Budget Authority and Congressional Budget Office Cost Estimate**

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this resolution.

### **Duplication of Federal Programs**

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H. Res. 1241 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H. Res. 1241 requests certain documents from the Secretary of Homeland Security related to immigration enforcement and border security.

### **Advisory on Earmarks**

In accordance with clause 9 of House rule XXI, H. Res. 1241 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House rule XXI.

### **Section-by-Section Analysis**

The following discussion describes the resolution as reported by the Committee.

H. Res. 1241 directs the Secretary of Homeland Security of the United States to transmit to the House of Representatives, not later than fourteen days after the date of adoption of the resolution, copies of any document, record, audio recording, memorandum, call log, correspondence (electronic or otherwise), or other communication in his possession, or any portion of any document, record, audio recording, memorandum, call log, correspondence (electronic or otherwise), or other communication, that refers or relates to the following:

(1) The number of “illegal aliens” on the no-fly list or the FBI’s Terrorist Screening Database who have been encountered by

United States Government personnel at the southwest border, between ports of entry since January 20, 2021.

(2) The number of “illegal aliens” on the no-fly list or the FBI’s who have been encountered by United States Government personnel at the southwest border, between ports of entry since January 20, 2021, and were subsequently released into the interior of the United States.

(3) The nationality of, and a description of the conduct for which, each alien on the no-fly list or the FBI’s Terrorist Screening Database who has been encountered by United States Government personnel at the southwest border, between ports of entry, and subsequently released in the United States, was placed on the no-fly list or the Federal Bureau of Investigation’s Terrorist Screening Database.

(4) Of the aliens described in paragraph (1) who were placed into U.S. Immigration and Customs Enforcement detention, the length of detention and location of detention for each alien.

(5) Of the aliens described in paragraph (1), the number expelled pursuant to section 362 of the Public Health Service Act (42 U.S.C. 265), ordered removed, granted voluntary departure, removed pursuant to expedited removal, removed pursuant to a reinstated removal order, and the country to which each was removed.

(6) Of the aliens described in paragraph (1), the number referred to the Department of Justice for prosecution under section 275(a) or 276(a) of the Immigration and Nationality Act (8 U.S.C. 1325(a); 8 U.S.C. 1326(a)).

(7) The current status of each case for aliens described in paragraph (1) who are still in the United States.

### Minority Views

H. Res. 1241 directs the Secretary of Homeland Security to provide Congress with documents, communications, and other information in his possession regarding illegal aliens encountered by U.S. Government personnel between ports of entry along the southwest border since January 20, 2021, who are listed on the no-fly list or in the Terrorist Screening Database.

Democrats on the House Judiciary Committee continue to ignore the unprecedented crisis on our southwest border. Since President Biden took office, U.S. Customs and Border Protection (CBP) officials have encountered nearly 3.5 million illegal aliens along the southwest border.<sup>1</sup> Nearly one million of those aliens have been released into the U.S. by the Department of Homeland Security (DHS) pursuant to DHS policy.<sup>2</sup> At the same time, nearly a million illegal alien “gotaways” have successfully crossed the border undetected during the Biden-Harris Administration.<sup>3</sup>

As of the end of July, during FY 22, U.S. Border Patrol had encountered 66 illegal aliens between ports of entry on the southwest

<sup>1</sup>U.S. Customs and Border Protection, Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>2</sup>*Texas v. Biden*, Case No: 2:21-cv-00067-Z (N.D. Texas) (Brief For America First Legal Foundation As Amicus Curiae In Support of Respondents, Defendants’ Monthly Report For March 2022, Defendants’ Monthly Report For April 2022).

<sup>3</sup>Adam Shaw, Bill Melugin, *Migrant Encounters at Southern Border Hit New Record in May, as Numbers Keep Rising*, FOX NEWS (Jun. 16, 2022) <https://www.foxnews.com/politics/migrant-encounters-southern-border-record-may>.

border who were listed on the Terrorist Screening Database.<sup>4</sup> This is 51 more than all of last fiscal year, and is exponentially more than in any other recent fiscal year.<sup>5</sup> There is no doubt that even more potential terrorists have crossed illegally into the U.S. as known gotaways or without being detected by Border Patrol. The Biden Administration’s lax immigration policies have put Americans in harm’s way.

In April 2021, news reports emerged that two men from Yemen had been arrested at the southwest border who were identified on the terrorism watch list.<sup>6</sup> In August 2021, “the head of the Border Patrol, Rodney Scott, told his 19,000 agents before retiring on August 14 that their national security mission is paramount right now despite the Biden administration’s focus on migrant families and children . . . .”<sup>7</sup> Scott went onto tell the agents, “it is a national security crisis. Immigration is just a subcomponent of it, and right now, it’s just a cover for the massive amounts of smuggling going on across the southwest border—to include [aliens on the Terrorist Screening Database] at a level we have never seen before. That’s a real threat.”<sup>8</sup> In January 2022, Scott told the Texas Public Policy Foundation during a panel discussion that “U.S. Border Patrol agents stopped 14 noncitizens who were named on the terror watchlist and tried to sneak into the United States between October 2020 and August 2021 . . . .”<sup>9</sup>

On January 27, 2022, an investigative journalist for Deadline Detroit told Fox News that “a Lebanese-born national listed on the FBI’s terror watchlist was released into the United States after crossing the border illegally.”<sup>10</sup>

On April 18, 2022, Fox News reported that pursuant to a FOIA request, it was able to confirm that 23 people who came across the border between January 20, 2021, and December 31, 2021, appeared on the Terrorist Screening Database.<sup>11</sup>

In March 2022, the Committee received an update from CBP substantiating a marked increase in the number of individuals encountered during Fiscal Year 2021 who were listed the Terrorist Screening Database.<sup>12</sup>

On April 28, 2022, at the Committee hearing, Ranking Member Jordan questioned Secretary Mayorkas about the current status of each of the aliens on the no-fly list or on the Terrorist Screening Database who had been encountered at the border. Specifically,

<sup>4</sup>U.S. Customs and Border Protection, CBP enforcement Statistics, Terrorist Screening Dataset Encounters, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

<sup>5</sup>*Id.*

<sup>6</sup>*Yemeni Nationals On Terror Watch List Arrested At California-Mexico Border*, CBS Los Angeles (Apr. 5, 2021), <https://www.cbsnews.com/losangeles/news/border-patrol-arrest-yemeni-terror-watch-list/>.

<sup>7</sup>Anna Giaritelli, *Suspected terrorists crossing border ‘at a level we have never seen before,’ outgoing Border Patrol chief says*, Yahoo! News (Aug. 16, 2021), <https://news.yahoo.com/suspected-terrorists-crossing-border-level-174700735.html>.

<sup>8</sup>*Id.*

<sup>9</sup>Anna Giaritelli, *14 illegal immigrants on terror watchlist stopped at border in 2021, former Border Patrol chief says*, WASHINGTON EXAMINER (Jan. 24, 2022), <https://www.washingtonexaminer.com/policy/14-illegal-immigrants-on-terror-watchlist-stopped-at-border-in-2021-former-border-patrol-chief>.

<sup>10</sup>Yael Halon, *Venezuelan National on FBI’s Terror Watchlist Released Into Michigan After Crossing Border: LeDuff* (Jan. 27, 2022), <https://www.foxnews.com/media/venezuelan-border-fbis-terror-watchlist-michigan>.

<sup>11</sup>Bill Melugin & Adam Shaw, *Border Patrol stopped 23 people on terrorist database at southern border in 2021: CBP data* (Apr. 18, 2022), <https://www.foxnews.com/politics/border-patrol-people-terrorist-database-southern-border-2021-cbp-data>.

<sup>12</sup>On file with Committee.

Ranking Member Jordan asked, “have any of the 42 illegal migrants on the terrorist watchlist or No-Fly List encountered at our southwest border been released into the United States?” Secretary Mayorkas did not have an answer to that question and instead deflected by promising to provide that data following the hearing.

On May 2, 2022, Ranking Member Jordan sent a letter to Secretary Mayorkas following up on his unanswered question from the hearing and requesting more information. To date, DHS has not complied with these requests or provided the data first requested on April 28.

On September 14, 2022, in light of Secretary Mayorkas’s refusal to answer basic questions, the Committee considered H. Res. 1241 at a business meeting. Democrats refused to acknowledge that terrorists are crossing our southwest border at an alarming rate due to the Biden Administration’s failure to secure the border. They showed no interest in getting DHS communications regarding aliens on the Terrorist Screening Database and the No-Fly list who have crossed the border. Democrats voted to report H. Res. 1241 unfavorably to the House. Republicans believe in border security and we strongly disagree with the Committee’s action.

JIM JORDAN,  
*Ranking Member.*

