

Exhibit 9

Todd Bensman Declaration

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Todd Bensman, and I serve as the Center for Immigration Studies (“CIS”) Texas-based Senior National Security Fellow. While at CIS, I authored “America’s Covert Border War: The Untold Story of the Nation’s Battle to Prevent Jihadist Infiltration,” which described the secret American border program created to prevent terrorist infiltration over the U.S. Southwest Border.

2. Prior to joining CIS in August 2018, I led homeland security intelligence efforts for nine years in the public sector. My body of work with policy and intelligence operations is founded on more than 20 years of experience as an award-winning journalist covering national security topics, with particular focus on the Texas border.

3. In 2009, I transitioned from journalism to join the Texas Department of Public Safety's Intelligence and Counterterrorism Division, where I managed teams of intelligence analysts that worked in concert with federal homeland security and U.S. Intelligence Community agencies to identify and mitigate terrorism threats. From the State of Texas fusion center for nine years, I designed and directed collection operations that fed

into the Intelligence Community and prompted or advanced federal counterterrorism investigations. Among my original programs was a specialized effort to help federal partners disrupt human smuggling networks transporting migrants to the U.S. land border from countries where Islamist terrorist organizations are active.

4. Prior to my government experience, I worked on staff for The Dallas Morning News, CBS, and Hearst Newspapers, covering the FBI, federal law enforcement and serving on investigative teams. I have reported extensively on national security issues after 9/11 and worked from more than 25 countries in Latin America, the Middle East, and Africa. In Texas, I authored long-form investigative stories with emphases on border security related to illegal immigration and Mexico's drug war. My reporting on human smuggling from Muslim-majority countries, Mexico's drug war, and cross-border gun smuggling to cartels earned two National Press Club awards and an Inter-American Press Association award, among others. The Texas Institute of Letters twice recognized my border coverage for high excellence in newspaper reporting. During the early 1990s, I reported on the Gulf War, to include scud missile attacks and refugee issues, from Israel, Egypt and Jordan. I went on to cover Eastern Europe, to include

armed conflict in Moldova and a year covering warfare in Bosnia, where I provided frequent dispatches from the siege of Sarajevo.

5. I hold a master's degree from the Naval Postgraduate School, Center for Homeland Defense and Security; my thesis was entitled "The Ultra-Marathoners of Human Smuggling: Defending Forward against Dark Networks that Can Transport Terrorists across American Land Borders." I also hold a master's degree from the University of Missouri School of Journalism, and an undergraduate degree in journalism from Northern Arizona University.

6. Since January 2021, I have visited the southwest border between Mexico and Texas five times. I have visited the El Paso Sector, the Del Rio Sector, the Big Bend Sector, and the Roma Port of Entry. When I visit the border, I make it a practice to ask the foreign nationals crossing the border directly about what made them decide to make the journey and what enabled them to get into the United States. There is no better source for knowing what is in their minds. Any time I ask—the migrants answer includes the word "Biden." They come because of the promises made and promises kept to the foreign nationals who want to settle in America.

7. The massive influx through the border which has continued all year was predictable as soon as the November 2020 presidential election was over. Would-be immigrants throughout the Americas saw the Biden campaign's messaging as a flashing green light that they would be able to enter the United States without obstruction and will not be detained or deported. Biden's immigration platform, which is still accessible online,¹ offered a powerful incentive for resumptions of caravans that brought a million migrants in during 2018-2019 before Trump finally broke their momentum with a slew of different policies.

8. All of the Biden campaign's promises set up the current mass migration event at the border by fueling high enthusiasm and travel plans throughout Latin America and the world. Of course, if the Biden administration had not backed up its promises with immediate action upon inauguration, the flow would not have continued. Word soon gets back from those who successfully crossed the border to relatives at home that it is indeed possible to cross and, once in the interior, they are not sent back, but instead are able to get American jobs and American benefits. These stories make those who are contemplating making the trip resolve to do so.

¹ See Joe Biden for President, The Biden Plan for Securing Our Values as a Nation of Immigrants (last visited Aug. 27, 2021), <https://joebiden.com/immigration/>.

9. The Biden administration cannot now say that the current border crisis was unforeseeable. These policies, combined with Biden’s promises to prioritize “a roadmap to citizenship for nearly 11 million undocumented immigrants,” were known to be a great draw to cross the border well before they were implemented.² There was also a Homeland Security Threat Assessment released in October 2020 that warned of a border crisis.³ DHS wrote then:

Since 2014, DHS has experienced repeated illegal immigration surges at the Southwest Border. DHS anticipates that the number of apprehensions at the border will significantly climb post-pandemic, with the potential for another surge as those who were previously prevented from seeking entry into the United States arrive at the border and as poor economic conditions around the world fuel migration. This high volume of illegal immigration, including unprecedented numbers of family units and unaccompanied alien children arrivals, stretch government resources, and create a humanitarian and border security crisis that cripples the immigration system.⁴

The report also named another factor likely to drive the next mass migration influx: migrant “perceptions of U.S. and Mexican immigration and enforcement policies” due to ongoing “inter-governmental division and inconsistent messaging.”⁵ That is, foreign nationals played close attention to candidate Biden’s immigration promises.

² *Id.*

³ U.S. DEPT. OF HOMELAND SEC., HOMELAND THREAT ASSESSMENT (Oct. 2020).

⁴ *Id.* at 24.

⁵ *Id.* at 23.

10. I myself reported early clues suggesting this prognosis reporting trip to the Mexico-Guatemala border, where I interviewed migrants who, to my surprise, repeatedly told me that because their chances of reaching the United States and staying had fallen to unacceptable lows under Trump, they would wait in Mexico, expecting him to lose reelection and for a successor to remove the barriers.

11. Tens of thousands like them applied for Mexican asylum⁶ in the time leading up to the election because the Mexican national guard blocked all the roads north (at President Trump's insistence) and Mexico was threatening to deport them unless they applied for Mexican asylum. As one of many of the Central American migrants and Mexican officials told me of migrants' decision to hang out in Mexico until President Trump lost: "I'll wait for that because it would make things easier to get in." An El Salvadoran woman coming to Mexico with a child said she'd chosen to live in Mexico, too, stating, "Once Trump is defeated and the Democrats take over, things are going to get better." Alma Delia Cruz, head of Mexico's asylum office in the southern state of Chiapas, told me she knew the majority of 70,000 asylum applicants her office was processing (up from just 76 the year before) had no intention of staying in Mexico for long. "This is just their first

⁶ *Mexico under pressure as asylum applications skyrocket*, BBC NEWS (Oct. 19, 2021), <https://www.bbc.com/news/world-latin-america-50040477>.

chance to get into the United States, of course,” she told me, adding, “I don't know what's on the minds of these people exactly but the threats from Trump can't deter them from eventually getting into the U.S.”

12. In keeping with the Biden campaign promises, the Department of Homeland Security (DHS) and the Department of State ended the highly effective “Remain in Mexico” pushback policy that had kept largely ineligible asylum claimants from disappearing into the American interior after they lose or abandon their claims.⁷ The Biden administration also ended the immediate expulsions under Title 42 of illegal border crossers for public health of families and children, though it continued to expel single men.

13. If the Biden administration had done an analysis as required under NEPA, it would certainly have been easy to foresee the current situation and it would have had to inform the American public of that possibility. This analysis would not have required speculation, as the dimensions of the coming crisis were obvious from the slightest attempt at research.

⁷ See Todd Bensman, *House Envy: The Unacknowledged Real Motivation Behind Guatemala's Mass Migration to the American Border*, CTR. FOR IMMIGR. STUD. (Feb. 10, 2020), <https://cis.org/Bensman/House-Envy-Unacknowledged-Real-Motivation-Behind-Guatemalas-Mass-Migration-American-Border>.

14. However, the initial reversals of successful Trump Administration policies were only the beginning. The details of the policies that DHS has implemented under the Biden administration, have facilitated a massive flow of people into the interior of the United States. Furthermore, these policies—which effectively restructure immigration policy—have been implemented without any transparency, greatly increasing the numbers who come every month without any of the administrative process that the laws of the United States, including the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA), guarantee to the public.

15. I visited Del Rio, Texas in March 2021, which offered me a representative glimpse into how the process works on the ground on the Southern border. It was in Del Rio Texas that I first encountered the policy I call “catch and bus” in action. When DHS encounters illegal border crossers it now gives them papers and then steers them towards buses, often arranged by non-governmental organizations (NGOs). I have read their tickets, and found that they are headed to places all over the country. One evening during that visit, I saw an idling charter bus parked on a lot prepared to disperse a new kind of import throughout the American landscape. The bus and a small van nearby were packed with sixty or so

mostly Haitian families fresh out of the Rio Grande from their illegal crossings.

16. I was able to find out more through investigating the charter buses themselves. The papers that DHS provides to many of the border crossers consist of an administrative document titled “Order of Release on Recognizance,” which grants them the legal right to be present inside the United States. Passengers agreed to show two such documents to me. I saw that the documents require the border crosser to self-report to a deportation officer in their destination cities by a specific date provided. One Nicaraguan national showed me a DHS document titled “Interim Notice Authorizing Parole,” which grants him a renewable one-year term to live legally inside the country. Most will likely use their time to apply for asylum, a lengthy, backlogged process that allows for work authorization and Social Security cards during an adjudication process that can drag on for years.

17. Back in January and February, DHS did not test any migrants for COVID but began to add that to their processing system after public outcry. In March, after migrants tested negative for COVID and other processing, DHS would give them their legal documents and then release

them to the Val Verde Border Humanitarian Coalition, a local nongovernmental organization, just blocks from the river.

18. According to Tiffany Burrow, the operations director of the Val Verde County Border Humanitarian Coalition there was an immediate surge during the transition period between presidential administrations which only intensified later.⁸ Once the arriving foreign nationals arrive at the border, they flag down the Border Patrol, are processed and given papers, and then dropped off at the Val Verde Border Humanitarian Coalition. The staff of volunteers help them obtain money for bus fare. Similar organizations operate in other border towns. In the beginning, Val Verde tried to use regular Greyhound buses but there were not enough guaranteed bus seats in the local commercial fleet or in San Antonio (130 miles away) to meet the demand. Thereafter, Val Verde started to arranged for dedicated charter buses for border crossers who expressed an interest in traveling to particular regions within the interior of the United States. In other, larger border towns, Greyhound remained the preferred method of travel to the interior, at least as of March.

⁸ Vanessa Croix, *A new surge of migrants is overwhelming this Texas border town's resources*, KENS5 (Feb. 4, 2021), <https://www.kens5.com/article/news/special-reports/at-the-border/a-new-surge-of-migrants-overwhelming-border-towns-resources/273-15eb48c6-de8c-4f90-8c18-3353bc02e150>.

19. In the first three weeks of March alone, at least twenty of these charter buses carried fifty people from the small town of Del Rio carrying passengers to new American lives in places like Fort Lauderdale, Orlando, West Palm Beach, and Newark, New Jersey. Lorenzo Ortiz of the El Buen Samaritano Migrante Church helps to coordinate the daily bus rides from Del Rio to the interior and said of the passengers, “They feel happy because they’re in the United States... They want to get as soon as possible to their destination. They’re all going to apply for asylum.”⁹ Given how satisfactorily this system works for those who have arrived, word spreads on social media and in calls to home of the new policies, which only continues to fuel greater levels of migration.

20. Their decisions cannot be considered a supervening cause under NEPA that makes DHS irresponsible for trying to predict what will happen. NEPA certainly requires considering easily foreseeable consequences—and these are easily foreseeable. There isn’t speculation, as the government expects and desires this outcome.

21. The buses in Del Rio represent a microcosm of a much broader aspect of the unfolding mass-migration crisis at the southern border that has attracted limited media coverage and occurs largely outside public

⁹ Bensman, *supra* note 7.

view. Tens of thousands of immigrants caught illegally crossing the border and then released under the new leniency policy of President Joe Biden are now dispersing to four corners of the United States on buses, with some of the more moneyed ones taking passenger jets. As best as the Center for Immigration Studies can determine from interviews and scattered media reporting, the buses are leaving regularly from Del Rio, the Texas Rio Grande Valley communities, and Laredo, but the busing also appears to be going on in Arizona, as well as in California.

22. Where the border crossers are headed is not randomly spread throughout the United States but targeted to areas where communities and relatives will welcome newcomers. Haitian, Venezuelan, and Cuban bus passengers often head towards Florida and New Jersey. Those from Nicaragua and other Central American nations have been delivered to Tennessee, Massachusetts, Indiana, Michigan, North Carolina, Georgia, Kentucky, and to large cities in Texas such as Dallas and Houston. For instance, on a visit to San Antonio's Greyhound bus station, I found several Venezuelans, a Nicaraguan man with two teenage sons, and several Guatemalan mothers with small children. Some had arrived from Laredo, others from Del Rio. All were waiting for transfer buses to Boston, Tennessee, and Dallas.

23. In May, I took a trip to Roma, Texas, which is located on the Rio Grande in a very southern part of Texas. In Roma, the channel of the Rio Grande is very narrow (less than 200 feet wide), which makes it a relatively easy point to cross. Roma is therefore the epicenter of the current crisis. It was in Roma where I truly witnessed that American's burgeoning mass-migration phenomenon was of nationally historic proportions. What follows is what I saw.

24. One dark night early in my trip, I headed from the outskirts of the town down a white dust road—about a mile to the Rio Grande, with a small group of other journalists, guided by an armed Christian pastor from the area. A Border Patrol agent soon pulled up a vehicle to block our progress—and argued with our armed preacher over whether the land owner's permission extended to us all. At that point, two teenage immigrant girls suddenly appeared behind the idling Border Patrol vehicle and peeked around at us shyly, waiting. I engaged them, and they told me they were each 16, Honduran, and had journeyed without their parents to begin new lives in America. Having not expected that he would leave two unaccompanied minor girls alone, I was surprised when the Border Patrol agent only said a few words to them and then drove away.

25. As we continued down the river, we encountered a group of twenty men, women, and children, and then another group. The girls were part of a larger group heading toward a makeshift Border Patrol processing station in the residential Roma neighborhood that I hadn't noticed, as they do now all night, every night. The Border Patrol agent, I realized, was simply playing his new role akin to a Walmart greeter. He had merely directed the immigrants to the station, where other agents would process them, a step toward final release into America.

26. We reached the Rio Grande by flashlight just in time to see a rubber raft land filled with human cargo. I hurried toward it and got to within a half dozen feet of its shirtless cartel pilot, who was standing on rocks, waving everyone off. These were all young adult men—unusual in that there were no women or children among them. They filed off the boat, seemingly in a hurry, and trotted around and past me. Unlike the minors, all refused to return “como estas” greetings.

27. As the young men disappeared into the dark, going north, the pilot got back in his green Seahawk raft and paddled back across for the next load. On the Mexican side where he landed, no one was even feigning stealth. I could see flashlights and clearly hear giggling or crying children prepping for the trip. I heard chatter among men and women, and air

pumps tightening plastic boat skins. That a major staging operation was happening over there was obvious. But I could see and hear other staging operations a hundred yards downstream, too. I saw flashes of green, blue, and white light on the Texas side hundreds of yards down. So I surmised that what I was seeing here also was happening in dozens of places up and down the river.

28. Eventually, I noticed an unlighted National Guard outpost just behind me in a nearby tree line. A Humvee was parked under a camouflage drape. Several soldiers carrying semi-automatic rifles loitered in the sand there. None wanted to chat. But eventually, they offered that their job was to observe and prevent trouble as the smuggling went on in front of them. It also became obvious that they were coordinating with Border Patrol by radio to send the immigrants like the 16-year-old girls up the dirt road to Border Patrol's processing station in that Roma neighborhood. They had no arrest authority. After witnessing the first boat load, I asked them what would happen. One of the soldiers answered, in obvious frustration, "Just what you just saw... I can't do anything about it." His job was merely to count them, not to stop them, all night. When I asked why they had weapons if they could do nothing but watch, he answered they were just for their own protection, because "you never know."

29. All through the night and into the morning, I watched what reminded me of a D-Day-like landing of Mexican cartel smugglers paddling blow-up rafts—sometimes two or three abreast in unending succession—brimming with men, women and children—under the indifferent watch of American authorities, who had been ordered by the Biden administration to stand down.

30. The Mexican cartel raft pilots displayed little caution about the police all around as they stepped out of their rafts onto the Texas shoreline to unload passengers. They did so just feet away from National Guard soldiers, Border Patrol agents, and Texas Department of Public Safety officers who not very long ago would have pounced on them.

31. At about 2 a.m., after watching dozens of boats deliver their passengers, I hiked up the dirt road to find the rumored mobile Border Patrol processing station. I found it in a vacant lot between ramshackle Roma houses where chained dogs kept up an incessant barking.

32. I was stunned to see the raft loads accumulated in one spot like this, close to 400 immigrants at that moment. They were sitting or standing, bathed in a flood of light from surrounding Border Patrol vehicles. At least

two large white school bus vehicles idled in the vicinity, drivers waiting behind their wheels.

33. Every few minutes, another large group of immigrants arrived from the river roads and entered the process queue, as the buses slowly filled with those who'd already gone through it. The buses were headed to a brick-and-mortar Border Patrol facility where immigrants could get cleaned up and processed for release into the nation a day or two later.

34. I counted at least ten agents working at the field station, none of whom would say how many full buses had already departed for the brick-and-mortar facility.

35. One agent eventually confided that this kind of traffic had been going on for hours already and would go on for at least another three before slowing, the same as it does every single day. "And this isn't even one of the hot spots," the Border Patrol agent added.

36. Here's how it all worked: New arrivals took their seats on the ground while agents tended to water, food, baby formula, and diaper needs. Every so often, an agent would call for some to join a standing line to a plastic table and folding chairs manned by five Border Patrol agents. One agent would collect their personal belongings in a plastic bag with their

names on it. These would go separately to the brick-and-mortar facility. Other agents would take their personal information and shoot photos, then put them in another queue for when the time came to load up the buses.

37. The mobile stations can form up anywhere on a moment's notice. On another night near Roma, the rafters started showing up on either side of the international bridge. In short order, Border Patrol pulled up in various kinds of vehicles and went at it for hours as ever more rafts emptied through the night.

38. As with what I'd seen earlier upriver, the smugglers and badge carriers worked together in their truce while the immigrants were compliant and quiet as they turned themselves in and lined up.

39. The border crossers were all wearing facemasks and life vests, which surprised me since cartel smugglers are not reputed to be very safety conscious. All also sported numbered wrist bands. The bands are a recent cartel inventory control innovation, seen as necessary with such high volumes coming in, to track that each has paid their \$5,000 smuggling ticket before they board. Many tear them off once they reach Texas so the bands litter the waterfront and the dirt roads leading up to Roma.

40. In all my years of working on the border, I had never witnessed anything like what I saw in the Rio Grande near Roma, at just one of hundreds of openly established raft crossing points along the south Texas border, a reflective microcosm of a mass illegal immigration involving mainly families and children.

41. The Border Patrol has been ordered not to enforce the law, but to be a welcome wagon for women, children, and families. They flag down law enforcement. Everyone understands their role, forming a virtual conveyor belt of mass immigration into the interior. While the boat of single men had not been part of this accepted process—they were runners—even they are easily able to escape into the interior, because the Border Patrol is far too busy with its role of meet, greet, and process.

42. I ask the border crossers what motivated them to come, and it is very clear that they all have a sophisticated understanding of the rules of entry. They know if they bring a child with them, they are allowed to come in freely. Most of them have paid \$5,000 each to get in, a price they would not pay to the cartels if there was no guarantee that they would get in.

43. The process has become an organized business, run in foreign countries by cartels that have become an amazingly professionalized

organization. For instance, the cartel La Linea sells a more expensive “package deal” for \$11,000. The package deal offers passage from Guatemala to any desired destination in the United States. Guatemalan nationals arrive with laminated directions, specifying exactly which bus to go to and where to catch them. There is very big money involved in human trafficking but the facilitation by the Biden administration is essential to allow the cartels to market these packages. There is big money involved. The cartels are able to market their packages because the immigrants are successful in coming and successful in settling into the interior.

44. In a most unnatural truce between natural adversaries, all badged American authority figures now work under orders to do nothing that could possibly obstruct the nonstop delivery of foreign families onto the Texas shore and instead to do everything to keep them moving inland to processing stations. This mass migration phenomenon has normalized into a streamlined, industrial fixture with conveyor-belt supporting infrastructure expanding on both sides of the border, a 7-days-a-week, 365 days-a-year part of the landscape. Cartel smugglers and the U.S. government have openly and closely partnered in it, with no pretense otherwise.

45. The cops-arrest-crooks paradigm is a sentimental memory here. Cartel smuggling groups now essentially hand off these illegal aliens

to Border Patrol reception cadres that will then do the administrative paperwork for quick release. Because of the Biden administration's policies, law enforcement and Cartel connect in a once-embattled no-man's land with a new mutual objective: keeping the pipeline full and moving human cargo northward into the American interior.

46. So established is this non-belligerence arrangement that cops and smugglers often banter with one another across the water or at the Texas shore about the weather, or how long the boats might be running tonight. Scenes play out where Border Patrol agents simply watch from five or six feet away as smugglers stand on the Texas riverbank or in shallow Rio Grande waters helping their illegal-alien customers out of boats.

47. Law enforcement officers do not arrest the raft coyote smugglers anymore, even when they're just feet away. As a result of this hands-off truce, those smugglers now freely and fearlessly do their work right in front of agents. The Biden administration has declared that doing anything other than welcoming and quickly legalizing families and unaccompanied minors brought in by cartel smugglers violates America's humanitarian values.

48. The rafters know they're immune from arrest or trouble, so they go back for more in repeated round trips that can go all day and all night. Officers and agents just point the immigrants toward mobile processing stations as the boats keep bringing more in.

49. Only a short time ago, those same raft smugglers knew they risked freedom and profits if the agents could lay a hand on them. Alien smuggling is a serious enough federal crime that these cartel workers had to move carefully, shifting on a moment's notice from cop hot-spots to other crossing areas, where maybe no law enforcement officers lurked. Making sure that smugglers were worried about capture and nervously hold back cargoes until a better, less risky time did not stop this flow, but certainly slowed it.

50. Losing their ability to happily paddle back and forth at the most ideal locations without fear of law enforcement would almost certainly reduce the uninhibited flood of illegal immigrant families to a comparative trickle.

51. What is going on is *not* just a failure to enforce the law—this is the active facilitation of mass entry. So many are coming in that DHS has expanded capacity to process those crossing with vast new tent camps. In

all past U.S. mass-migration episodes, the rush on the border has occurred in spite of frantic federal government efforts to stop, oppose, and attenuate the floods by any means necessary.

52. But now an American government purposefully allows, enables, facilitates, and manages an expanding capacity for this one. CBP agents are in a kind of culture shock knowing all of this. Some admit they are deeply unhappy about abdicating basic border control duty for which they signed up and trained. One knowledgeable U.S. Customs and Border Protection employee, in disgust, characterized the arrest stand-down policy this way: “We have ceded the entire battle to the cartels, just given up.”

53. The national media no longer even considers this upside-down state to be news and has mostly left the audience after an initial intensity of interest. But while cameras and talk show hosts move on, the human swell to the U.S. side of the southern border has continued and escalated.

54. The result of all this is an enormous mass migration through the border during the Biden administration. As of August, agents at the Southwest border have apprehended 1.276 million aliens—more than any year since 2000.¹⁰ Apprehensions have exceeded 100,000 and increased

¹⁰ Andrew R. Arthur, *Incredibly, Biden’s Border Disaster Got Even Worse in July*, CTR. FOR IMMIGR. STUD. (Aug. 13, 2021), <https://cis.org/Arthur/Incredibly-Bidens-Border-Disaster-Got-Even-Worse-July>.


every month for the past five. That includes since May, after which they have traditionally declined.

55. This mass migration event has had, and will continue to have, massive consequences, including environmental consequences. It has been enabled because DHS' NEPA procedures, arbitrarily and capriciously, do not place immigration actions into any sort of NEPA framework. This unjustifiable neglect has allowed DHS to carry on as if immigration has a total exemption from the NEPA statute.

56. That attitude has, in turn, allowed an administration to use its discretionary powers to entirely change the immigration system—allowing millions of foreign nationals to enter and stay through a method entirely unauthorized by the Immigration and Nationality Act. It has done so without following any process that the American public is entitled to.

57. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of December, 2021.


Todd Bensman