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The migrant crisis that still hasn't arrived

By **KATHERINE LONG** | 05/23/2023 07:00 PM EDT

QUIET ON THE SOUTHERN FRONT — Roughly two weeks have passed since the end of Title 42, and the huge influx of migrants that was supposed to send the border into chaos hasn't materialized. Instead, there was a 50 percent drop in border crossings in the immediate days following the end of the public health mandate that gave legal cover for Title 42.

So, what happened?

While it's not entirely clear yet, that drop was at least in part related to the huge number of migrants entering the U.S. in the days before the end of Title 42 — reaching 11,000 per day, among the highest on record. Unsure of what might replace the policy, some migrants made a concerted effort to cross the border before Title 42 expired.

Additionally, in preparation for the end of the emergency health authority that allowed the U.S. to deport migrants without a hearing, the Biden administration sent 1,500 additional troops to the border and introduced stringent regulations to blanket-deny asylum to a significant portion of migrants. In order to help migrants apply for asylum — instead of traveling to the border and running afoul of the new regulations — Biden also introduced the CBP One app (which has been basically unusable thus far).

It adds up to a border policy that has been successful in keeping migrants out after the end of Title 42, but has also frustrated some immigration advocates, who filed a legal challenge to Biden's asylum ban in California the day it went into place.

To get a sense of why the end of Title 42 has led to a surprising decrease in migrants at the U.S. southern border — and the Biden administration's immigration goals moving forward — Nightly spoke with Muzaffar Chishti, a senior fellow at the Migration Policy Institute. This interview has been edited.

Why hasn't the end of Title 42 resulted in the predicted surge of migrants into the United States?

Well, the honest answer is we don't know. We can only speculate. In many ways, Title 42 had a salience that was kind of exaggerated. People thought that Title 42 led to expulsion of everyone and once people understood that that era has gone, people will start coming in. The fact is that most people, before it was lifted, were not subject to Title 42. By the beginning of May, only around 35 percent of people were subjected to Title 42. That means the overwhelming majority were just not put under it. If you look at the nationalities beyond Mexico and Central America, only around eight percent of people were subject to Title 42. So, in the real world, it did not make that much of a difference.

The second reason is that Title 8 [an earlier immigration law that went back into effect after Title 42's expiration] is much more punitive than Title 42, at least legally. Under Title 42, if you're subject to it, there was no consequence. That's why people made repeated attempts and if they didn't get in on second or third, they could on the fourth attempt. Under Title 8, you are subject to expedited removal and under expedited removal there's a consequence to removal. You cannot come back to the country for five years even legally,

and if you do attempt to make another illegal entry you get a felony. So in some regards, it's much more consequential and that may have gotten the word to the immigrant communities that this is much worse than Title 42 was. So there will be consequences. We think that's part of the calculation.

But perhaps more importantly, the dust has still not settled. Immigrant communities are smart. They want to see how the dice is going to roll, that 'look, will Title 42 lead to more people being allowed to get in or more people expelled?' And so it's too early for them to know what the long term sustained outcome of Title 42 is. This is more of a wait and watch kind of situation than a sustained phenomenon that we can guarantee is going to be the norm. The administration is busy saying that 11,000 people were removed in the days after Title 42 was lifted. That is true, and that's a significant rise, but 21,000 people were let in at the same time. So if you're a smuggler or someone who follows social media, you would not see an obvious trend from that to form your long term data.

What did the people who predicted that surge get wrong?

They predicted that Title 42 was expelling everyone, and if you now came to the border, you would just be let in. So that's what they got wrong. It also is true, which a lot of people have been focused on, that there was a big surge in the days preceding the lifting of Title 42. So some of the smart ones may have said 'look, if you want to get in, the time to get in is before Title 42 is lifted,' and that's what led to the big surge before the lifting and then the drop after.

How has Biden's new asylum policy affected migrants in the first few weeks of its usage?

Well, that's an odd thing. First of all, the lifting of Title 42 is not the big change to me. The big change occurred because the other part of the policy, which is the transit rule, kicked in at the same time that Title 42 was lifted. It's the congruence of these two developments that is more important.

It's the new asylum border rule which will have a more lasting impact. So under the asylum border rule, the emphasis of this administration was if you incentivize people who are going to sign papers to come to the border using the app for an appointment, and we de-incentivize people from coming between ports of entry by basically saying that you are deemed ineligible unless you meet one of the one of the exemptions, this will unleash a new sense of order. I think that is true, but the way they have implemented it is not fully living up to the promise of the border asylum rule. People who are getting appointments are

coming to the port of entry, but instead of being screened there for asylum, they just let them into the country with a notice to appear before a judge and are asked to complete their asylum application in the country. That's what's happening so far, which in some ways defeats the purpose. So all the asylum processing is being done inside the country.

So what are some ways in which the Biden administration is dealing with migrant flows effectively and some areas where could they improve?

Laws mattered much less than resources. We just do not have resources to process thousands of people a day at the border. Just to do expedited removal, which by definition, means expedited, takes 90 minutes for an interview. That's why Title 42 was more expedient, because you didn't have to create any record. That's why it was favored by the Trump administration as expediency, not as consequence. So they were concerned that 9,000 people a day would be coming. There is no way for us to detain 9,000 people. There is no way for us to screen 9,000 people for credible fear determinations. The default position has become 'let them in.' And that if that message gets across, that the chances of you getting into the country are 50 percent, people will take the chance. So we have to be able to pull the resources to meet the demand. We're not sure we are there. I think if it stays at 3,000, 4,000 [encounters] a day, as they are saying the numbers are in the last, you know, week or so, I think that's manageable. But if we start going up to 9,000-10,000, then we'll be back to square one.

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WHAT'D I MISS?

— **U-Haul driver arrested for crash near White House, police say; apparent Nazi flag found on scene:** Police arrested a Missouri man on multiple charges, including attempting to kidnap or kill the president, vice president or a family member, after he crashed a U-Haul into a security barrier near the White House Monday night. Around 9:40 p.m., Sai Varshith Kandula, 19, allegedly “intentionally” crashed into barriers on the north side of Lafayette Square, U.S. Park Police said in a statement this morning.

— **Biden nominates Lt. Gen. Timothy Haugh to lead NSA, Cyber Command:** President Joe Biden has nominated U.S. Air Force Lt. Gen. Timothy Haugh, the no. 2 at U.S. Cyber Command, to serve as the new head of both Cyber Command and the National Security Agency, according to an Air Force notice. The notice, obtained by POLITICO, was sent out on Monday and is titled “General Officer Nomination.” It announces that the president has nominated Haugh to the Senate for promotion to four-star general and assignment in the dual-hatted role.

— **White House raises alarm on risks of social media for kids:** The White House and the U.S. Surgeon General warned today that social media poses mental health risks to kids and teens and they called on Congress to pass new laws to protect young people online. With those risks in mind, the Biden administration also announced the creation of a new task force to study social media and how it affects minors. And a new U.S. Surgeon General report pressed for “urgent action” by policymakers, tech companies, researchers, families and youth to better understand the impact that apps like TikTok, Instagram and YouTube have on kids’ mental health, as 95 percent of teens in the U.S. use social media.

NIGHTLY ROAD TO 2024

TAKING TO TWITTER — Florida Gov. Ron DeSantis will officially announce his candidacy for president on Wednesday in a conversation with Elon Musk streamed on Twitter.

The chat will be moderated by tech entrepreneur David Sacks, a friend of Musk and a financial supporter of DeSantis. The move comes as Twitter looks to ramp up its native 2024 content — Tucker Carlson will also host his new show on Twitter.

FRIENDLY RIVAL — Sen. Tim Scott is running for president. Donald Trump, the Republican he’s taking on, couldn’t be more pleased, reports POLITICO’s Meredith McGraw.

The former president and his aides have long viewed a crowded GOP primary as advantageous to the ex-president's chances of winning the 2024 presidential primary race, believing a splintered field only hurts his main competitors. Scott's entrance was judged, in part, by the question: was it good or bad for DeSantis' chances of winning? Among the Trump faithful, the answer was, it certainly doesn't help.

"The more the merrier," said one Trump adviser of Scott's announcement. "Tim Scott doesn't have to write 'Be Likable' at the top of his notepad," referencing a video from a 2018 DeSantis debate prep where he was advised to be "likable" to the audience.

Trump aides have been buoyed in recent days by signs that the '24 primary field is about to get crowded. Scott has jumped in and DeSantis and former New Jersey Gov. Chris Christie, an ally turned foe of Trump, are also expected to announce bids soon. There is a belief, internally, that any new entrant will take voters away from the Florida governor (Trump's closest competitor for the nomination). The challenge they have is to decide which of those candidates to badger or welcome.

PICK 'EM — Ron DeSantis told an audience gathered at the National Religious Broadcasters convention in Orlando Monday that over the next two presidential terms, whoever is leading the nation could be responsible for picking successors for both Justice Samuel Alito and Justice Clarence Thomas, reports POLITICO's Gary Fineout.

He said that if the next president appoints someone like Chief Justice John Roberts to replace Thomas "you are actually going to see the court shift to the left." Alito is 73 years old and Thomas is 74.

DeSantis went further and said that it's even possible that the next president may appoint successors for both Roberts and Justice Sonia Sotomayor. Roberts and Sotomayor are both 68. He made the context clear by then saying that whoever is in the White House could help create a conservative majority on the court that would "last a quarter century."

AROUND THE WORLD

EXTENDED DETENTION — A Russian court today extended the detention of Wall Street Journal reporter Evan Gershkovich by three months, according to a Russian state news agency.

Gershkovich was arrested in March in Yekaterinburg, Russia on espionage charges, which both the Journal and the State Department have denied.

The State Department designated Gershkovich as “wrongfully detained” by Russia in April. Secretary of State Antony Blinken has spoken with Russian Foreign Minister Sergey Lavrov to call for Gershkovich’s release; a rare communication between high-level U.S. and Russian officials during Russia’s invasion of Ukraine.

The court’s decision will now keep Gershkovich detained until at least Aug. 30.

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NIGHTLY NUMBER

\$100,000

The amount of money that Rep. Marjorie Taylor Greene (R-Ga.) paid at an impromptu fundraising auction for chapstick used by House Speaker Kevin McCarthy. McCarthy sweetened the deal — which took place during the GOP conference this morning — by agreeing to attend a dinner with donors or supporters of whoever won.

RADAR SWEEP

WATER SAVER — A crisis over a long term water shortage in states around the Colorado River appears to have reached a temporary conclusion. The solution: pay farmers not to farm. The farmers around the Colorado River were using up about 80 percent of the water reserves, and thanks to a fairly wet winter, the federal government has budgeted enough

relief that they can convince farmers to give up some crop output in exchange for cash. This, in turn, frees up water resources for other people who live along the river or rely on it for clean water. Read Jake Bittle on the deceptively simple solution — and why it might just work — in Grist.

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