

The Senate Border Bill Is a Disaster for Border Security

THE ISSUE

The U.S. Senate has finally released the “border security” text that three Senators secretly negotiated for weeks with the Biden Administration. The [Emergency National Security Supplemental Appropriations Act of 2024](#) includes more than \$20.2 billion for “border” funding and hundreds of pages of border and immigration reforms. The key takeaway is that neither the funding nor the statutory reforms would truly secure the border, and border security is the only measure that Congress should use.

CONGRESS SHOULD STOP FUNDING SANCTUARY CITIES AND NGO INFRASTRUCTURE

With more than \$7 billion for the Departments of Homeland Security, State, Justice, and Health and Human Services, the Biden Administration would again fund “sanctuary” jurisdictions and nongovernmental organizations (NGOs) that have been facilitating mass illegal immigration, using federal grants provided by these departments. Sanctuary mayors and governors have decried the volume and cost of illegal aliens amassed in their jurisdictions, yet they do not terminate their sanctuary policies. Instead, they demand more federal taxpayer money to pay for sheltering, transporting, and providing social services to the ever-increasing number of illegal aliens. This bill would deliver for these mayors and governors.

Both the Biden Administration and the sanctuary officials work with a network of

[secretive](#) NGOs that built and staff the considerable infrastructure that facilitates the mass illegal immigration from as far south as [South America](#) to, and throughout, the United States. Multiple [videos](#) have shown that NGO staff at shelters, [hotels](#), and [airports](#) refuse to answer questions about the illegal aliens they guard and grow [physically abusive](#) when filmed. Congress should be investigating and shutting down this sanctuary-NGO machinery, not giving it more money to continue operating.

SENATE-NEGOTIATED BILL CODIFIES BIDEN’S OPEN-BORDER TOOLS

What three Senators negotiated with the architects of America’s border crisis would convert the Biden Administration’s destructive policies and violations of immigration law into statute. These measures would not only continue the border crisis but would also make it more difficult for a future enforcement-minded President to fix.

Unacceptably, the Senate bill:

- **Accepts and codifies crisis levels of daily illegal immigration.** If passed into law the bill would create a three-year “Border Emergency Authority” to allow agents to expel illegal aliens back across the border during “extraordinary migration circumstances”—but the numerous exceptions and limitations swallow that authority whole. The Secretary of Homeland Security has the discretion to activate the authority after the U.S. Customs and Border Protection (CBP) encounters an average of 4,000 illegal aliens *daily* for seven consecutive days. Secretary

This paper, in its entirety, can be found at <https://report.heritage.org/fs258>

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activation of the emergency authority becomes mandatory after the CBP encounters a 5,000 illegal-alien daily average for seven consecutive days or 8,500 in one day. Not counted in those numbers are unaccompanied children, parolees, those who claim a fear of persecution, have already been in the U.S. for 14 days, or already traveled beyond 100 miles from the southwest border. The Secretary would not be able to activate the authority for more than 270 days, 225 days, and 180 days in calendar years one, two, and three, respectively. The bill then adds cumbersome and confusing calendar calculation requirements that further limit the Secretary's use of the emergency authority. Finally, both the Secretary and the President could suspend the authority.

Continuing to allow these crisis-level numbers of illegal-alien encounters means that border agents would remain overwhelmed and more illegal crossers would evade the agents—turning into “gotaways”—and bad actors would slip through limited and rushed vetting.

- **Continues “catch and release” and guts the mandatory detention statute.** Current law mandates detention for any alien who illegally enters the U.S. while pursuing asylum protection. The Senate bill redefines “detention” to “noncustodial detention” and applies this supervised release-by-another-name only to adults. If passed into law, families and children would be released without supervision. Worse, the bill codifies the *Flores* settlement agreement, as interpreted by a single U.S. district judge in California, who ruled that unaccompanied aliens could not be in immigration detention longer than 20 days. She later expanded her ruling to accompanied aliens, meaning families. This bill encourages more child recycling by cartels so that more aliens would

pose as families to avoid even supervised release. DHS Enforcement Lifecycle Reports show that aliens released from detention are rarely removed and are far less likely to abide by a court-issued deportation order. Non-custodial release will result in a significant increase in the alien fugitive backlog.

- **Expands and codifies Secretary Alejandro Mayorkas’s mass parole abuse.** The Senate should have adopted the parole-narrowing text from the House-passed bill, the Secure the Border Act (H.R. 2). Instead, the Senate bill expands parole beyond exigent medical circumstances and a significant law enforcement or intelligence purpose for those arriving at or between land ports of entry. It includes other urgent humanitarian reasons, religious and cultural celebrations, and permits an accompanying alien to join the principal alien. In addition, the bill does not limit parole for aliens arriving at air or seaports.
- **Continues to encourage asylum fraud and accelerates work permits.** In violation of the Homeland Security Act and section 103 of the Immigration and Nationality Act, Secretary Mayorkas finalized a rule in which he removed U.S. Immigration and Customs Enforcement (ICE) attorneys and immigration judges from credible fear asylum cases. He replaced them with U.S. Citizenship and Immigration Services (USCIS) asylum officers reviewing their fellow asylum officers, resulting in rubber stamping grants of asylum. If enacted, the Senate bill would codify Secretary Mayorkas’ asylum processing rule. It would give aliens work authorization immediately upon release and create a bureaucratic third administrative appellate body with multiple chances for review, reconsideration, appeal, and motions to reopen their case. This would continue to encourage illegal aliens to submit fraudulent asylum claims to gain entry and remain and work in the U.S.

- **Provides numerous and significant immigration reforms that are unrelated to border security.** These include:

- Requiring U.S. taxpayers to fund deportation defense attorneys for unaccompanied aliens under 14 years and aliens found to be incompetent. Deportable aliens should continue to pay for their own deportation attorneys or seek the services pro bono. The left is breaking this bright line rule, starting with children, but it would certainly expand this benefit to other deportable alien populations in future legislation. Notably, U.S. citizens do not receive taxpayer-funded civil defense attorneys.
- Providing amnesty (green cards) to Afghans inspected and admitted to the U.S. by the date of the bill's enactment or paroled from July 30, 2021, until enactment. The bill also accelerates naturalization for the amnestied Afghans and gives "Afghan allies" refugee status for up to 10 years.
- Increasing the annual cap on the number of permanent family-based and employment-based immigrant visas for five years.
- Providing minor status and employment authorization for sons and daughters of H-1B visa holders, even though they have turned 21.

- Expanding the "business or pleasure purpose" of the "B" temporary visa to add a broad definition of "family purposes." The bill also permits family members to use the broader "B" visa to remain in the U.S. while they await their family-based green card. This undermines the temporary purpose of the "B" visa.

PRESIDENT BIDEN COULD SECURE BORDER WITH CURRENT AUTHORITY— HE DOES NOT WANT TO

President Joe Biden opened the border and created the country's crisis using only executive, not congressional, authority. He can end the chaos with the same executive authority; he does *not need* congressional authority.

THE ONLY TEST FOR FUNDING AND LEGISLATION: WOULD IT TRULY SECURE THE BORDER?

When illegal aliens come to the U.S., they want to enter, remain, and work here—and that is the best-case scenario. The border is just as open to terrorists, the Chinese, Russians, and any number of people who do not want to merely work here. Securing the border requires preventing those three things. The bill negotiated by three Senators and President Biden funds and facilitates more mass illegal immigration. It is a disaster for border security.