

Incoming Speaker and House Republicans Cannot Squander Another Opportunity to End the Biden Border Crisis

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KEY TAKEAWAYS

The 11th-hour spending agreement in place through November 17 kept both the border and government open.

Congress missed an opportunity to address the Biden border crisis and must not make the same mistake again as threats to the homeland grow by the day.

Given the attack on Israel, the House must secure our border by using the appropriations process, impeaching Mayorkas, and putting H.R. 2 on the President's desk.

Recent border numbers illustrate that, following the end of Title 42 and expansion of “welcome and release” policies, the surge through our porous borders is worsening. On top of the millions who have already entered the country illegally, including those who “gotaway” from authorities, the Biden Administration is knowingly allowing over 10,000 illegal border crossings a day, including many by military-age males from all over the world including terrorist hotbeds in the Middle East. Given what is happening in Israel, we must assume that terrorist organization sleeper cells are inside the United States. Congress must wake up and act before the situation worsens.

In response to a known existential threat that has become more dire, a Heritage-led border security coalition noted several weeks ago that unless House

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Republicans acted with aggressive purse-string control by requiring inclusion of the Secure the Border Act (H.R. 2)¹ as part of any spending agreement, the Biden Administration would continue to shatter historic and damaging border records by nearly every metric.²

On September 30, just hours before a government shutdown and the Democrat-controlled Senate's refusal to act, Congress did the exact opposite: It passed a 47-day Continuing Resolution (CR) to keep the border *and* government open. This bipartisan spending package that originated in the Republican-controlled House and was quickly signed into law is a continuation of funding and policies put in place by the disastrous fiscal year (FY) 2023 omnibus, which has given the Biden Administration the ability to “manage” a never-ending, self-inflicted crisis by enticing, guiding, processing, transporting, housing, and providing social services to even more illegal aliens.

But the fight is not over. Securing the border must remain a top priority, especially given what is happening in Israel where a border once billed as the most secure in the world has been overrun.

Between now and the November 17 government funding deadline, House Republicans and the new Speaker must intensify efforts to secure the border and ensure that our immigration laws are enforced. This can be done many ways. Congress should continue to defund Biden's open border tools and attach aggressive immigration policy riders to relevant appropriations bills awaiting consideration, the House should complete its investigation into the possible impeachment of Homeland Security Secretary Alejandro Mayorkas, and Members of Congress should once again consider requiring the inclusion of H.R. 2 as a condition for passing future government funding.

H.R. 2: Still the Only Policy Solution to End the Border Crisis

The Secure the Border Act (H.R. 2), which continues to collect dust in the Senate because of a host of other priorities above public safety and national sovereignty, remains the only way to address the current border crisis effectively. Simply throwing money at the border for more “border security” without H.R. 2's policy changes will only further endanger the American people. Congress cannot continue to fund the flood of illegal aliens—including potential terrorists—that the Biden Administration is ushering into America every day.

H.R. 2 is absolutely critical because it would close loopholes used for asylum fraud; fortify border security by ending “welcome and release;” end

the illegal use of mass immigration parole (a “temporary” end-run around requiring an alien to get a visa); expand penalties for visa overstays; reduce incentives for illegal immigration by mandating nationwide E-Verify; and close longstanding loopholes in the processing of both accompanied and unaccompanied alien children. The bill also would resume construction of the border wall, provide essential support for Customs and Border Protection (CBP), and prohibit the Biden Administration’s reliance on non-governmental organizations to process and transport illegal aliens into American communities.

The time for action is now. H.R. 2 must become law if the homeland is truly to be secured: Simply writing a check as part of an unrelated supplemental spending bill will only worsen the crisis.

With respect to Israel, let us be clear: Israel merits our support. However, it must be acknowledged that we do not have the requisite border security or interior enforcement in place to prevent terrorist attacks that pro-Hamas adversaries have threatened in America. It is therefore essential that House Republicans and the incoming Speaker urgently act to protect America through actual policy changes independent from providing financial support to Israel. Accordingly, attaching “border security” money to Israel funding without policy changes is a trap that, however well-intentioned, must be avoided.

How to Make Remaining Spending Bills Even Stronger

As we outlined in a detailed report in July,³ the House Homeland Security appropriations bill that passed several weeks ago was the strongest in years and was made even stronger on the floor. It contains many resource provisions related to H.R. 2, seeking to rein in the reckless manner in which the primary agency driving the Biden Administration’s open-border agenda funds such operations.

The policy changes contained in H.R. 2, however, remain the best approach. The inclusion of spending riders merely supplements an aggressive, comprehensive approach to border security. House Republicans must boldly replicate their Homeland Security approach in other unfinished appropriations bills—notably Labor, Health and Human Services, and Education, as well as Commerce, Justice, Science, and Related Agencies—over the coming weeks.

As it relates to border security, the current Labor, Health and Human Services, and Education bill awaiting full committee consideration seeks to:

- **Reduce** funding for programs that support unaccompanied alien children (UACs) to disincentivize families and teens from paying to transport them or their children illegally across the southern border.

This bill could be significantly strengthened by:

- **Striking** Section 229 of the current text, which allows “state-licensed” facilities for the care of UACs. This is harmful *Flores* settlement language, and any federal law that requires state licensing in the immigration detention context must be opposed. This is a federal matter, and Congress should not allow sanctuary states to use licensing authority to effectively invalidate federal detention programs. As if that language were not bad enough, an additional subsection provides that grants or contracts of any facility must require compliance with the same requirements under *Flores*, even explicitly referencing the agreement. Further, the subsection is overly prescriptive regarding the number of required workers per number of UACs. The goal should be to end the inhumane flow of UACs, not to accommodate it. This is a poison pill that must be addressed, especially considering that Title III of H.R. 2 would fix *Flores*. Congress must get rid of *Flores*,⁴ not inadvertently codify it in a spending bill at the worst possible time.
- **Preventing** any funds from being obligated to private nonprofit voluntary agencies for the purpose of domestic transportation of UACs, as defined in 6 USC 279(g)(2),⁵ into the United States.
- **Ensuring** that any funds made available to the Administration for Children and Families in the Department of Health and Human Services (HHS) may be made available only if the Office of Refugee Resettlement (ORR) takes all necessary measures to ensure that UACs, as defined in 6 USC 279(g)(2), are placed in the care of parents, guardians, or sponsors who have been fully vetted by ORR, and ORR certifies that each parent, guardian, or sponsor has no criminal history, has been lawfully admitted into the United States, and has adequate monetary maintenance to support the unaccompanied child through the entire immigration process and that the parent, guardian, or sponsor does not already have an unaccompanied child in its care and custody, unless a sibling of the currently placed unaccompanied child, and would not otherwise pose a danger or substantial risk to the child.

- **Requiring** ORR to provide bimonthly reports to relevant committees on the number of UACs placed with parents, guardians, or sponsors and on the office's filled-capacity percentage at its facilities.
- **Requiring** ORR to provide bimonthly reports to relevant committees on its progress in locating UACs previously placed with sponsors. The report shall include the number of placed children whose sponsors have not been responsive to ORR or who are otherwise unaccounted for, the number that have been located since the previous report was issued, and the number of UACs who have been located and deemed victims of trafficking.
- **Preventing** funds from being used to review, process, or approve any application for a new or replacement Social Security number or card submitted either by any alien who is unlawfully present in the United States or by any representative or surrogate of such alien.

As it relates to immigration proceedings and law enforcement, the current Commerce, Justice, Science, and Related Agencies appropriations bill seeks to:

- **Mandate** that the Executive Office for Immigration Review (EOIR) reinstate case completion performance metrics to increase adjudications and hold open-borders immigration judges accountable.
- **Prevent** any funds from being used to direct or incentivize any immigration judge to close or dismiss any cases on his or her docket without a final resolution.
- **Prevent** any funds from being used to provide legal representation to aliens in removal proceedings.
- **Reject** the Biden Administration's request to halt reimbursements to law enforcement for the costs of incarcerating dangerous criminal aliens.
- **Maintain** strong support for law enforcement by preserving robust funding for Byrne JAG formula grants and COPS Hiring grants that assist state and local law enforcement agencies.

This bill could be strengthened by:

- **Amending** Section 559 to prevent the United States Census Bureau from including any alien—not just those who are unlawfully present—when rendering apportionment determinations in subsequent decennial censuses.
- **Providing** immigration judges summary judgment authority to rapidly dispose of meritless requests for relief from deportation and quickly decrease the 2.6 million-case backlog in the immigration court system.
- **Preventing** removable aliens from gaming the immigration court process to prolong their stay in the U.S. by raising the standard for continuances and restricting the number of appeals and motions.

Additional spending bill avenues include the following:

- **Provide** no funding for any organization, regardless of its tax exemption status, that provides or attempts to provide any cash assistance, including legal representation, for any inadmissible or removable alien who is present in the United States (any appropriations bill).
- **Provide** no funds for any program or activity in or for any state or locality until they have affirmatively demonstrated to the satisfaction of Congress that laws are in effect to prohibit non-United States citizens from voting in federal, state, and local elections (any appropriations bill).
- **Prevent** any funds from being used to subsidize housing or any housing-related benefit for any inadmissible or removable alien who is present in the United States. This shall apply in all circumstances, including aliens with a dependent who is either a United States citizen or is otherwise lawfully present in the United States (Transportation, Housing and Urban Development, and Related Agencies).
- **Provide** no infrastructure funding, including highway construction, for any sanctuary jurisdictions until they cooperate with Federal immigration authorities (Transportation, Housing and Urban Development, and Related Agencies).

- **Prevent** any funds from being used to thwart or obstruct any Department of Homeland Security law enforcement personnel from entering upon Department of the Interior properties under any circumstances or for any reason (Interior, Environment, and Related Agencies).
- **Prevent** any funds from being used to thwart or obstruct any Department of Homeland Security law enforcement personnel from entering upon Forest Service properties under any circumstances or for any reason (Interior, Environment, and Related Agencies).

Secretary Mayorkas's Conduct in Office Merits Impeachment

Alejandro Mayorkas took an oath to support and defend the Constitution and faithfully discharge the duties of his office. Instead, he has violated the oath of office, abused the powers of his office, and betrayed the trust of the American people.⁶

Under Secretary Mayorkas, more illegal aliens have entered our country than entered in the 12 years of the Obama and Trump Administrations combined. The overall total has exceeded 7.6 million and does not include at least 1.6 million known “gotaways” who have successfully evaded authorities.⁷ Even worse, hundreds of suspects on the FBI’s terrorist watch list have been arrested at the border. Mayorkas has knowingly endangered Americans.

Secretary Mayorkas’s policies and actions have resulted in the expansion of the Mexican drug cartels’ operational control of the U.S. border along with their capacity to expand their vast and complex networks into the U.S. These cartels have put at risk the lives and safety of the dedicated officers who serve under Secretary Mayorkas’s charge. He has also orchestrated a system of processing and transporting illegal aliens into and throughout the U.S. rather than detaining and removing them as required by law.

Secretary Mayorkas has shifted to an equally unlawful policy of pre-registering inadmissible aliens outside the U.S. for mass entry and release through ports of entry. Mayorkas has labeled this a “lawful pathway,” but in reality, it has institutionalized his violations of law.

Secretary Mayorkas’s reckless policies of encouraging and facilitating the entry and release of millions of illegal aliens into the U.S. have pulled limited law enforcement personnel off the front lines, away from their national security mission, and have allowed cartels to flood America’s communities with fentanyl, violent criminal aliens, gang members, and potential national security threats. Secretary Mayorkas has also acted inexcusably to denigrate

and abuse CBP officers, has lied to Congress and deceived the public about the nature and consequences of his policies, and has acted to suppress the constitutional and statutory rights of Americans.

For these violations, abuses, and betrayals, Secretary Alejandro Mayorkas deserves to be impeached, removed from office, and disqualified from holding any further office of honor, trust, or profit under the United States.

Conclusion

The horrific attack on Israel provides a terrifying reminder of what can happen when a border is not secure. It also begs the question: Is America next? Despite this dangerous reality, the Biden Administration, with the backing of Democrats on Capitol Hill, continues to allow our homeland to be overrun by illegal aliens, including military-aged men from adversarial countries.

Enough is enough. It is time for the incoming Speaker and House Republicans to unite behind the already passed mechanism to fix this disaster: H.R. 2. Securing America's border must remain a top legislative priority over the coming weeks. Most important, however, the border crisis should not be viewed as a problem that can be solved simply with more taxpayer dollars—a trap that has been laid alongside providing critical financial assistance to Israel.

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Endnotes

1. H.R. 2, Secure the Border Act of 2023, 118th Congress, introduced in the House May 2, 2023; passed May 11, 2023; introduced in the Senate May 16, 2023, <https://www.congress.gov/bill/118th-congress/house-bill/2/text?s=3&r=1&q=%7B%22search%22%3A%22Secure+the+Border+Act%22%7D> (accessed October 20, 2023).
2. "Funding HR2 Coalition Letter," September 14, 2023, https://www.scribd.com/document/671248890/Funding-HR2-Coalition-Letter#from_embed (accessed October 20, 2023).
3. The Heritage Foundation, "FY 2024 Homeland Security Appropriations Bill Is Strongest in Years, but Has Room for Improvement," *Factsheet* No. 252, July 14, 2023, <https://www.heritage.org/budget-and-spending/report/fy-2024-homeland-security-appropriations-bill-strongest-years-has-room>.
4. Press statement, "Carafano & Howell: Trump Administration Right to Terminate Flores Settlement Requiring Family Separations," The Heritage Foundation, August 21, 2019, <https://www.heritage.org/press/carafano-howell-trump-administration-right-terminate-flores-settlement-requiring-family> (accessed October 22, 2023).
5. 6 USC 279(g)(2), <https://www.law.cornell.edu/uscode/text/6/279> (accessed October 20, 2023).
6. Hans A. von Spakovsky, Lora Ries, and Steven G. Bradbury, "The Case for Impeachment of Alejandro Nicholas Mayorkas Secretary of Homeland Security," Heritage Foundation *Special Report* No. 266, February 6, 2023, <https://www.heritage.org/immigration/report/the-case-impeachment-alejandro-nicholas-mayorkas-secretary-homeland-security>.
7. U.S. Department of Homeland Security, U.S. Customs and Border Protection, "Nationwide Encounters," last modified October 21, 2023, <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (accessed October 22, 2023).