

# IMMIGRATION REPORT



## Manchin and Senate Parliamentarian Deal a Blow to Amnesty Push, Democrats Fight On

2021 ended with Senate Parliamentarian Elizabeth MacDonough and Senator Joe Manchin (D-W.Va.) delivering a one-two punch to the Democratic Party's hopes of using the budget reconciliation process to bypass normal Senate procedures and sneak a massive amnesty for illegal aliens into law.

The first blow was delivered by MacDonough who, on Dec. 16, ruled that a third attempt by Senate Democrats to include a de facto amnesty for about 7 million illegal aliens in the so-called Build Back Better (BBB) bill violated Senate rules. After being rebuffed twice previously, the White House and Senate Democrats hoped to include language that vastly expanded the president's parole power, allowing him to grant millions of illegal aliens relief from removal for 10 years and permission to work in the United States. Much like DACA and Temporary Protected Status, amnesty advocates knew that beneficiaries would remain permanently.

Despite enormous pressure – including calls for her firing – MacDonough honorably ruled that the massive de facto amnesty was not legitimately a budgetary

matter and that it did not belong in a government funding measure. Budget reconciliation bills can be enacted with a simple majority in the Senate, avoiding the need to garner 60 votes to avoid a filibuster. The House of Representatives approved its version of BBB in November, which also included amnesty and other immigration provisions.

The second blow came three days later when Sen. Manchin announced on Fox News Sunday that he could not support the BBB bill in its entirety, citing the bill's massive price tag, the likelihood it would fuel inflation, and a Congressional Budget Office projection that it would add \$3 trillion to the federal deficit. Along with 50 firm "no" votes from Senate Republicans, Manchin's opposition denied Vice President Kamala Harris the opportunity to cast the deciding vote on BBB, with or without the amnesty provisions.

End of story, right? Not so fast. When it comes to amnesty for illegal aliens, the lavishly funded network of advocacy groups and their allies in Congress and the Biden administration never relent. The onset of 2022

# Blow to Amnesty Push

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saw amnesty and open borders coalitions regrouping and preparing for yet another attempt to enact some form of amnesty and immigration increases, motivated by the prospect that this is likely to be the last year that Democrats will control (however thinly) majorities in both houses of Congress. “We haven’t given up,” declared Senator Catherine Cortez Masto of Nevada, a Democrat who is facing a tough reelection bid in November.

Congressional Democrats are applying a multi-pronged approach to their efforts to implement an amnesty and other sweeping immigration changes before time runs out on the 117th Congress. The strategy rests on the Senate Democratic leadership’s ability to craft a revised BBB that satisfied Sen. Manchin’s concerns about the cost of the measure, without alienating members of the party’s left flank, which would constitute a formidable challenge in its own right.

If that can be accomplished, the Congressional Progressive Caucus, which includes about a hundred members, is urging Senate Majority Leader Chuck Schumer (who faces a potential primary challenge from Rep. Alexandria Ocasio-Cortez later this year), to ignore the parliamentarian’s ruling and keep the amnesty and immigration provisions in a revised bill. However, overruling the parliamentarian would

require the unanimous buy-in from Senate Democrats, something Sen. Manchin has already indicated that he would oppose.

Another option being considered – assuming that BBB can be revived – is a fourth attempt to craft immigration provisions that could pass muster with the parliamentarian – another longshot after she has repeatedly made clear that significant changes to immigration policy cannot be approved using the budget reconciliation process. Moreover, if Senate Democrats go too far in watering down amnesty and other immigration provisions, they could lose support from members on the far left and could prompt a confrontation with angry progressives in the House.

Other members of Congress and open borders advocates are also urging President Biden to act unilaterally to grant quasi-legal status to illegal aliens. Much like former President Barack Obama did in 2012 when he implemented the DACA amnesty (after publicly proclaiming that he lacked the constitutional authority to do so), they are pressing President Biden to assert broad authority to grant parole to millions of illegal aliens.

The actions of Sen. Manchin and Ms. MacDonough were unquestionably a setback for the amnesty lobby (and a victory for the American public), but FAIR is not resting in its efforts to prevent new attempts from gaining traction in 2022. Over the course of the coming year, FAIR will continue to work with allies in and out of Congress to build public opposition to legislative or executive efforts to implement amnesty for illegal aliens.

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### Federation for American Immigration Reform

25 Massachusetts Avenue NW  
Suite 330  
Washington, DC 20001  
(202) 328-7004  
info@fairus.org  
www.FAIRus.org

# Front Line Border Agents Accuse the Biden Administration with Failure to Comply With Court Order to Reimplement MPP

In December, the Biden administration reluctantly agreed to comply with a federal court order to reimplement the Migrant Protection Protocols (MPP), also known as the “Remain in Mexico” policy. MPP was an important bilateral agreement struck by the Trump administration with the government of Mexico with the goal of deterring rampant abuse of our political asylum system. By requiring people hoping to file a claim for political asylum in the United States to wait in Mexico until an initial hearing on their cases could be held, MPP discouraged countless people from attempting to file fraudulent claims. During the first few months that MPP was in place, there was a 75 to 80 percent reduction in the number of family units arriving at the border.

President Biden unilaterally canceled MPP on his first full day in office. But his administration failed to comply with the proper procedures for canceling the program and a federal judge ordered that it be reinstated. After the U.S. Supreme Court refused to stay the judge’s order, the administration grudgingly agreed to restart MPP, while at the same time vowing to continue its efforts to terminate it. In the last edition of the Immigration Report, FAIR predicted that “the Biden administration will use the program as sparingly as it can possibly get away with.” Sadly, we were right.

A month into the “reimplementation” it became clear that the administration’s foot-dragging had exceeded expectations. Brandon Judd, the president of the National Border Patrol Council (the union representing Border Patrol agents), reported that the program has only been implemented in two locations along the U.S.-Mexico border, El Paso and San Diego. Furthermore, on average, a mere 35 people per day are



being sent back. Border apprehensions are running at close to 200,000 per month, and because of secure border walls in those two sectors, few people attempt to cross in those areas.

“I do not believe enrolling only 35 out of approximately 5,000 illegal border crossers per day is complying with the court order,” Judd charged. Judd’s accusation is echoed by former Acting Commissioner of U.S. Customs and Border Protection (CBP), and current FAIR fellow, Mark Morgan. “At the end of the day, it’s very clear this administration has been slow rolling the court’s order,” Morgan said. “It’s been over six months now [since the initial court order], and all we have to show for it is a few hundred of migrants that have been enrolled in the program.”

The administration’s lack of good faith in complying with the judicial order to reinstate MPP amounts to contempt of court. It will be up to Judge Matthew Kacsmaryk to make that determination and decide what, if anything, can be done to force a reluctant administration to reinstitute the policy in a meaningful way.

# Biden Administration Undermining U.S. Workers: Rubberstamping H-1B Applications



While Americans watched in horror as the Biden administration spent its first year in office creating chaos and lawlessness along our borders, the administration also was quietly using the legal immigration process to bludgeon American workers.

Under the Trump administration, the Department of Homeland Security (DHS) sought to end abuse of the H-1B skilled guestworker program by prioritizing applications based on the salaries being offered and the skill levels of the applicants. In other words, the aim was to end the practice of using H-1B visas to replace or displace American workers. The rule adopted during the Trump administration operated on the logical premise that the larger the salary, the less likely companies would be to bypass American workers, and the more highly skilled the applicant, the less likely it would be to find U.S. workers with matching skills.

Even before the Biden administration formally scrapped the Trump rules in December, it was clear that the protections for American workers were being dramatically loosened. During fiscal years 2018 and 2019, DHS rejected 24 percent and 21 percent of H-1B applications. That figure dropped to 13 percent in FY 2020 (the last full year of the Trump administration), likely because employers got the message and stopped filing many frivolous applications.

During the first year of the Biden presidency, rejections fell to a mere 4 percent of applications – likely because companies were getting precisely the opposite message from the new administration. In his earlier stint as director of U.S. Citizenship and Immigration Services (USCIS), Biden’s DHS secretary, Alejandro Mayorkas, imposed a “get to yes” policy on the agency. Under his edict, agency employees were ordered to ignore evidence of fraud and ineligibility and approve just about any application that came across their desks.

Most startling was the immediate leap in approval of visas for so-called body shops that subcontract H-1B workers to American employers. The two most notorious of these Indian-based labor contractors, Infosys and Wipro saw their rejection rates fall respectively from 36 percent in FY 2020 to 4 percent in FY 2021, and 26 percent in FY 2020 to 5 percent in FY 2021. Likewise, Cognizant, a large U.S.-based labor contractor saw its rejection rate plunge from 43 percent in FY 2020 to just 1 percent last fiscal year.

Mayorkas’ policy edicts issued in October make it unlikely that there will be any oversight of how H-1B workers are used once they are in the United States. The secretary has ordered a halt to worksite enforcement (which discourages the hiring of illegal aliens) absent compelling evidence of exploitation of foreign workers. There is little reason to believe that DHS will be any more vigilant in ensuring that H-1B workers are not being used to displace or replace American workers.

# Immigration Reform Law Institute – FAIR’s Legal Affiliate – Exposes Vast Tax Expenditures on Legal Representation for Illegal Aliens

The Immigration Reform Law Institute (IRLI), a public interest immigration law group affiliated with FAIR, uncovered data indicating that local governments across the country will provide \$5.6 million in taxpayer money to fund legal representation to illegal aliens fighting removal from the country this year alone. In all, some 50 state and local jurisdictions were found to be funding the legal defenses of illegal aliens.

A progressive non-profit organization based in New York City, the Vera Institute of Justice, has served as the main catalyst for the proliferation of these deportation defense programs. The group claims that its SAFE Initiative (Safety & Fairness for Everyone) is formal partners with 22 of the more than 50 publicly-funded local and state deportation defense programs across the U.S.

Unlike defendants in criminal cases, there is no constitutional guarantee of publicly-funded legal representation in civil matters. Immigration proceedings are considered civil matters and therefore there is no obligation on the part of government entities to pay for legal representation. In fact, the widespread public funding of legal representation for illegal aliens provides them with benefits not made available to American citizens defending themselves in civil cases, such as disputes with the IRS.

IRLI’s report also exposed the fact that there is little or no oversight of how the public’s money is being used. When IRLI sought a breakdown of how money provided by Philadelphia was spent, the city declined, saying that it can’t provide such information because it does not provide any sort of management or oversight over the program. Moreover, the prime beneficiary of Philadelphia’s funding, the Pennsylvania Immigrant Family Unity Project, acknowledges there is “no eligibility criteria other than income and a lack of private counsel,” adding that they do not “exclude individuals based on prior criminal convictions, residency, or any other reason.”

Additionally, as IRLI notes, Philadelphia and other jurisdictions expending public funds to provide illegal aliens with legal counsel, are doing so in the face of budget crunches that are forcing them to slash other programs.

IRLI’s investigation of public funding of legal representation for illegal aliens was widely reported in the media, including Fox News and National Review.



# It Pays to be Illegal in California

California already provides health care benefits to illegal aliens under the age of 26, through the state's Medi-Cal program. Starting in May, low income illegal aliens over the age of 50 will also be eligible for taxpayer funded Medi-Cal benefits. Soon, if Gov. Gavin Newsom has his way, all illegal aliens in the state will be eligible for health coverage.

According to The California Blueprint, which lays out new initiatives proposed in the state's 2022-2023 budget, "Governor Newsom's [plan] will make California the first state in the nation to offer universal access to healthcare coverage for all state residents, regardless of immigration status." This is the latest, and perhaps the most expensive step the state has taken to reward illegal aliens at taxpayers' expense. The federal Affordable Care Act (also known as Obamacare) explicitly bars illegal aliens from eligibility because, as backers of the program acknowledged when it was enacted in 2010, doing so would pose undue cost burdens on the public and serve as a further magnet to new illegal immigration.

Gov. Newsom proposes to pay for these expanded benefits to illegal aliens out of the state's \$45.7 billion budget surplus – a windfall that may be short-lived. As Politico reported last year, "California's



coffers are bulging thanks to the high-flying Silicon Valley, surging stock market and a large share of professionals who were able to continue working remotely during Covid-19." That surplus may quickly dry up as tech stocks began a decline in late 2021 and have continued to slump in early 2022. Additionally, the latest Census Bureau reports indicate that California saw a precipitous decline in population, fueled in large part by the exodus of high-earning professionals who are able to work remotely from places with far lower costs of living, lower taxes and better quality of life.

If Gov. Newsom's plan to grant universal health care benefits "regardless of immigration status" (on top of all the other benefits the state provides to illegal aliens) comes to fruition, the inevitable

result will be an even greater influx of low-income, heavily-subsidized illegal aliens. Thus, the cost of health coverage for illegal aliens will increase along with the growth in the illegal population, while vagaries of Wall Street and the exodus of high earners may leave the state with a vastly diminished revenue stream.

According to research by FAIR, California taxpayers are burdened with about \$25 billion in annual costs for the benefits and services provided to illegal aliens and their dependent children. If the governor and state legislature carry through on the plan to subsidize health care benefits for illegal aliens, that figure is certain to grow significantly.

# New York City Gives Citizens of Other Countries the Right to Vote in Local Elections

Self-governance – the right of citizens to chart their own course and determine their own leaders – was one of the founding principles of our nation. Nearly 250 years later, in the nation’s largest city, the New York City Council, enacted by an overwhelming majority a measure that grants citizens of other countries the right to vote in local elections. The Council’s decision was ratified by the city’s new mayor, Eric Adams, shortly after he assumed office on January 1.

Under New York City’s new law, an estimated 800,000 foreign nationals will be eligible to vote. Those newly-enfranchised include both legally present foreign nationals (who have lived in the five boroughs for as little as 30 days) and illegal aliens who have protection under the Constitutionally questionable Deferred Action for Childhood Arrivals (DACA). A total of 1.1 million votes were cast in last November’s mayoral election, meaning that the addition of 800,000 foreign nationals to the voter rolls will likely result in foreign citizens determining the outcome of future elections.

While citizens of other countries are only authorized to vote in city elections, it is unclear how that limitation will be enforced. For instance, when voters show up at the polls later this year, candidates for Congress, the U.S. Senate, and governor will also be on the ballot. Thus, unless strict safeguards are in place, noncitizens in New York City could determine the outcome of what is expected to be a tighter-than-usual gubernatorial election in November.

New York City’s unilateral surrender of sovereignty still faces some legal challenges that may prevent the new law from going into effect. On January 7, a coalition of New York (city and state) Republicans filed a lawsuit in the Staten Island Supreme Court challenging the constitutionality of the new law. The plaintiffs argue that noncitizen voting is explicitly barred by Article 2,

Section 1 of the New York State constitution.

“Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for 30 days next preceding an election,” the relevant section reads. “Anyone reading New York state election law in plain English can see that it prohibits foreign citizen voting,” said Councilman Joe Borrelli (R-Staten Island), who serves as the council’s minority leader. New York State Republican Party chair Nick Langworthy went even further, asserting, “The law is clear and the ethics are even clearer: we shouldn’t be allowing citizens of other nations to vote in our elections, full stop.”

Over the years, FAIR has repeatedly warned that the inexorable chipping away at laws meant to enforce immigration policies – sanctuary jurisdictions, access to nonessential public services and benefits, and the like – posed a grave threat to national sovereignty. New York City’s unconstitutional law (if it is not struck down by the courts) represents the clearest threat yet by allowing citizens of other nations to determine the outcome of our elections.



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