

# IMMIGRATION REPORT



## Immigration Enforcement All But Frozen by ICE During Biden's First Year

Nearly half way through Fiscal Year (FY) 2022, the Department of Homeland Security (DHS) finally released Immigration and Customs Enforcement (ICE) data for FY 2021. The numbers confirm that the Biden administration has all but ceased removing illegal aliens from the United States.

Reports within DHS indicate that even Secretary Alejandro Mayorkas, the chief architect of the Biden immigration policy, was taken aback by how precipitously the number of illegal aliens removed from the United States fell during the administration's first eight months in office. The bad optics of plummeting removals amid historically high levels of new illegal immigration may explain why the administration chose to release these data while the nation's attention was focused on Russia's war on Ukraine and soaring inflation.

Among the disturbing data revealed in DHS's 2021 ICE Annual Report:

- **59,011 deportable aliens removed.** In contrast to nearly 1.8 million people who were encountered entering the U.S. illegally in FY 2021, and an estimated

500,000-600,000 who eluded apprehension, ICE removed barely a thousand per week. The FY 2021 removals are the lowest on record since 1995, and the lowest in the history of ICE, which was created in 2003.

- **About half of the FY 2021 removals occurred during the Trump administration.** The data indicate that 28,677 removals occurred prior to February 18. That means that during the last eight months of the fiscal year, ICE removed just about 100 illegal aliens per day.

- **With at least 15 million illegal aliens in the U.S., ICE initiated only 74,082 arrests.** Fewer arrests mean that even fewer illegal aliens will be removed in future years. The FY 2021 figures (the first four months of which were under the Trump administration) are about half the number of such arrests in the pre-COVID years of 2018 and 2019. While the number of new cases declined in FY 2021, ICE closed or dismissed 18,809 existing removal cases.

- **The dramatic FY 2021 decline in ICE enforcement occurred before the issuance of new DHS guidelines that further constrain the**

# Immigration Enforcement Frozen

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**agency.** Beginning on the final day of FY 2021, DHS Secretary Mayorkas issued three new sets of guidelines that further limit the categories of immigration lawbreakers who are subject to enforcement, including many with criminal records, and where ICE can carry out enforcement actions.

President Biden may not have formally abolished ICE, as the far left flank of his party has demanded, but the FY 2021 data demonstrate that his administration has all but abolished its functions as an agency that enforces U.S. immigration laws.

With the implementation of Secretary Mayorkas' draconian guidelines that further restrict ICE's ability to arrest and remove illegal aliens, the administration moves ever closer to defiance of a federal court order, issued in January 2021. In a lawsuit brought by Texas Attorney General Ken Paxton, Federal Judge Drew Tipton ruled that the president did not have the authority to suspend deportations, and agreed with the plaintiffs that states would "suffer imminent and irreparable harm" as a result.

The anemic removal numbers recorded during the president's first eight months in office, combined with new restrictions on arrests and removals implemented in FY 2022 that will drive those numbers even lower, are creating a *de facto* moratorium on removals that will need to be addressed by the courts.

## FAIR IN ACTION



FAIR's Director of Research, Spencer Raley speaks to university students.



## Immigration REPORT

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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



## TPS for Ukrainians Must Be Offset By Ending Unwarranted Protection for Others

An estimated 25,000 to 30,000 Ukrainian nationals in the U.S. were granted Temporary Protected Status (TPS) by the Department of Homeland Security in early March. With Ukraine enduring a brutal military invasion by Russia that includes blatant war crimes, citizens of that country who were temporarily (or even illegally) present in the United States when the fighting broke out will be permitted remain and work here for up to 18 months.

TPS was created by Congress in 1990 to address precisely the sort of situation that now exists in Ukraine. So long as Russian tanks are rolling, missiles are flying, and civilian populations are being targeted, the United States cannot ethically require people to return to that country.

However, the justifiable grant of TPS to Ukrainians raises important questions about the circumstances under which temporary protection should be ended. In almost every case in which TPS has been granted, the status has been extended long after the triggering event faded into history. In the case of Honduras, the hurricane that ravaged the country occurred a quarter of a century ago.

To prevent these endless extensions of TPS, FAIR has urged that each time the status is granted it be accompanied by a clear statement of what conditions should trigger revocation of TPS. Ending TPS should occur once the immediate threats to life and safety brought on by war, political upheaval, or natural disaster no longer exist. Revoking TPS and requiring that people who accepted our offer of *temporary* protection return home does not require that conditions in the home countries be ideal – because they never will be.

FAIR has also called for termination of TPS for countries where circumstances and conditions no longer warrant it. Further, Congress and the Biden administration must end efforts to grant amnesty and green cards to people who accepted our offer of temporary protection and now seek to remain here permanently.

# Biden Calls for Securing the Border in State of the Union Address, His Actions Say Otherwise

Near the end of his long, rambling State of the Union address, President Joe Biden acknowledged what most everyone who is not serving in his administration has known for a long time: Our border are out of control. Another thing most Americans understand is that the president's policies are directly responsible for our borders being out of control – a reality that Mr. Biden refuses to acknowledge.

Nevertheless, his admission that we “need to secure the border” is a baby step in the right direction for a president who has both denied that a crisis even exists, and that to the extent that there is a problem at the border, it is due to circumstances beyond his control. President Biden’s remarks to Congress and the nation were light on specifics, while his “strategy” for getting a handle on unchecked illegal immigration continues to rely on Vice President Kamala Harris’ efforts to address the “root causes” of migration, as though the United States has the ability to end crime, corruption, and poverty in the migrant sending countries.

Conspicuously absent from the president’s speech were any concrete actions his administration is prepared to take in order to restore the relative calm that prevailed at the border when he took office in January 2021. Nor should anyone expect that an administration that has dedicated itself to wrecking border and immigration enforcement will take any meaningful steps to bring President Biden’s call to secure the border to fruition. FAIR has a long list of steps that can and must be taken to regain control of the border, should anyone in the White House be interested:

## **Resume construction of the border wall.**

Among Mr. Biden’s very first acts as president was to halt construction of secure fencing along the southern border. The border wall, the first sections of which were built under President Bill Clinton, and significantly added to under President Donald Trump, has proven

to be enormously effective where it is in place. Construction of many additional miles of the border barrier has already been funded by American taxpayers and is awaiting a green light from Washington.

**Fully reinstate the Migrant Protection Protocols (MPP).** Ironically, President Biden called for greater cooperation with Mexico to stem the flow of migrants to the U.S. border. Perhaps the president forgot that an effective agreement was in place when he was sworn in, and that he canceled it within hours of taking office. The so-called “Remain in Mexico” policy effectively deterred bogus asylum seekers from attempting to cross the border illegally, knowing that they would be returned to Mexico until an initial ruling could be made on the validity of their claims. Moreover, his administration is defying a federal court order to reinstate the program, while the Departments of Justice and Homeland Security remain committed to ending it permanently.

**Restore the Asylum Cooperation Agreements with Central American governments.** President Biden also urged greater cooperation with governments in Central America to deter large flows of migrants. Again, such agreements were in place on January 20, 2021, and were promptly canceled by the new administration.

**Fire Secretary Mayorkas and rescind his policy directives.** Non-enforcement policies, both at the border and in the interior of the country, have been formulated and carried out by Homeland Security Secretary Alejandro Mayorkas. Mayorkas’ policy directives drastically limit the ability of the two primary immigration enforcement agencies – Customs and Border Protection and Immigration and Customs Enforcement – to do their jobs. President Biden must replace him with a secretary who will uphold his or her constitutional duty to enforce the nation’s immigration laws.

**End catch-and-release policies.** Rather than expel illegal migrants, or detain them pending a determination of their eligibility to enter the United States, the Biden administration has released hundreds of thousands in the country. Most will never appear for a hearing. The high probability of release (which is about to get higher with the end to COVID-related restrictions on admission) has fueled the border crisis the president claims he wants to end.

These are just a few of the obvious and immediate steps the president could take if he were truly interested in scaling back the crisis at the border. So far, he has taken none. The only logical conclusion is that President Biden's brief remarks at the State of the Union would placate an American public that has grown increasingly alarmed about the border crisis. It won't, because the American people understand that the president's words are not being matched by his actions.

## Obama-Appointed Judge Sides with FAIR's Legal Affiliate that Illegal Alien Spouses of U.S. Citizens were Not Entitled to Stimulus Checks



When Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act in 2020, it explicitly required that those receiving so-called stimulus checks have valid Social Security numbers (SSN). This provision barred illegal aliens from collecting

benefits, including those who were married to U.S. citizens.

The SSN requirement led to a lawsuit, based on the claim that it discriminated against illegal aliens spouses of U.S. citizens – which of course it did, because a majority

of members in both houses of Congress decided it was a bad idea to hand out large checks to illegal aliens, especially during a COVID-induced economic crisis. FAIR's legal affiliate, the Immigration Reform Law Institute (IRLI), filed a friend of the court *amicus* brief arguing that there is no fundamental right to marital recognition that encompasses a right of illegal aliens to receive checks from the United States government. Accordingly, the federal statute in question should be upheld if it has a rational basis.

In March, an Obama-appointed Federal District Court Judge in Maryland, Ellen Hollander, dismissed the lawsuit. As a result of Judge Hollander's decision, illegal aliens will not be eligible to receive stimulus checks retroactively.

# Government Funding Bill Fails to Add Border Crisis

A \$1.5 billion omnibus spending package to finance federal government operations through the remainder of the current fiscal year was approved by both houses of Congress in early March. With House Democrats in charge of writing spending legislation, the bill provides little hope for the American people that the long-running crisis at our southern border will be addressed. However, the far-left wing of the Democratic Party did fail when it came to including poison pill policy riders that would have exacerbated the border crisis even more.

On its face, the omnibus goes beyond current funding levels for immigration enforcement. The bill provides a \$240 million cash infusion for U.S. Immigration and Customs Enforcement (ICE) and \$1 billion for U.S. Customs and Border Protection (CBP). It also maintains funding for critical programs like border wall construction and keeps detention space at Trump-era levels. That's the good news. The bad news is that there are no mechanisms in the spending package that will compel the Biden administration to spend the money as intended. In fact, based on President Biden's first 14 months in office, there is every reason to believe that the money will be diverted to support the administration's anti-enforcement efforts.

What the final spending package didn't contain is also important. Thanks to efforts by FAIR and some Republicans on Capitol Hill who are truly committed to immigration enforcement and border security, open borders poison pills that appeared in the initial Homeland Security appropriations bill were successfully eliminated. Among the poison pills that failed to make it into the final version were provisions that would have barred ICE's Homeland Security Investigations unit from providing assistance to the division of the agency that actually removes illegal aliens from the country. Additionally, a provision that would have prevented mandatory detention of criminal aliens was also struck from the bill.

But, "not-as-bad-as-it-could-have-been" is not good enough. Many troubling provisions remained in the bill that was signed by President Biden. These include:

- Taxpayer-funded lawyers for some illegal aliens seeking U.S. residence. (This move will almost certainly lead to demands to expand publicly funded legal representation for all illegal aliens facing removal.)
- Centers to help process those who enter illegally.
- \$370 million to fund 'enhanced border security' in Jordan, Lebanon, Egypt, Tunisia, and Oman.
- Hundreds of millions of taxpayer dollars for U.S. Citizenship and Immigration Services (USCIS), which has always operated as a fee-for-service agency, to help tackle backlogs in processing applications for immigration benefits.

Amid the global uncertainty triggered by Russia's invasion of Ukraine and soaring inflation at home, the omnibus spending package was approved with bipartisan support despite its failure to effectively address the illegal immigration crisis. It is likely that, under the circumstances, many members of Congress did not want to engage in political brinkmanship that could lead to a government shutdown during a time of crisis. However, FAIR expects that if there is a change in leadership in one or both houses of Congress after the midterm elections, the new Congress will aggressively utilize control of the purse strings and increased oversight authority to ensure that the Biden administration actually secures our border and enforces immigration laws.



## News from our State and Local Operations

### **Florida**

Gov. Ron DeSantis, fed up with the Biden administration's refusal to enforce immigration laws and its clandestine settlement of illegal aliens around the country, including in Florida, is promoting Senate Bill 1808, legislation that would protect his state. While he has limited powers over immigration, the governor is backing legislation that would deny state contracts to transportation companies involved in moving illegal aliens into Florida. The bill would allocate \$12 million to transport illegal aliens out of Florida (including to President Biden's home state of Delaware). It also proposes new restrictions on shelters that are being used to house unaccompanied minors who are brought to Florida. Additionally, all counties that operate detention centers would be required to enroll in the 287(g) program that facilitates identification of people who are in the country illegally. Currently 48 of the state's 67 counties participate in the 287(g) program. The bill would also prohibit sanctuary policies anywhere in Florida.

### **Massachusetts**

The Massachusetts State House voted overwhelmingly to have the commonwealth join 16 other states and the District of Columbia in

granting driver's licenses to illegal aliens. The bill was approved overwhelmingly in February by a 120-36 margin in the Democratic dominated chamber. All Republicans in the House, along with 7 Democrats, opposed the measure. The bill is expected to be approved by a similarly lopsided margin in the State Senate. Republican Governor Charlie Baker has expressed opposition to the granting of licenses to illegal aliens. However, supporters of the bill would likely have the votes to override the governor's veto.

### **Iowa**

A bill that would require all employers in Iowa to participate in the federal E-Verify program has begun to move in the state legislature. In February, the State Senate Judiciary Committee approved State File 339 and is awaiting consideration by the full body. More encouragingly, a companion bill in the State House has begun the process of approval in that chamber. House Study Bill 635 cleared its first hurdle in mid-February when it was approved by a key subcommittee. Gov. Kim Reynolds, whom national Republicans tapped to present the party's rebuttal to President Biden's State of the Union address in March, has expressed her support of the E-Verify measure and would almost certainly sign it should it reach her desk.

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