

# IMMIGRATION REPORT



## Strong Immigration Enforcement Bill Set to Be Voted on by the House of Representatives

*Editor's note: This edition of the FAIR newsletter was completed before a final vote on The Secure the Border Act of 2023 was held in the House of Representatives. The outcome of that vote will be reported in the June edition of this newsletter.*

Addressing the worsening illegal immigration crisis was a top priority for the new Republican House majority. During the first few months of the 118th Congress, various House committees held hearings in Washington and around the country to assess the impact of the Biden administration's blatant efforts to throw open our borders and all but eliminate enforcement of U.S. immigration laws.

With the information-gathering phase completed, House leaders began making good on their promise to enact legislation designed to address the crisis and hold the Biden administration accountable. In April, two key House committees approved strong bills to remedy the unprecedented surge of illegal immigration. Those two bills, along with another one considered by the Foreign Affairs Committee, were combined into one bill, H.R. 2, *The Secure the Border Act of 2023*.

In the months leading up to the introduction of these bills, FAIR worked closely with key members of Congress

to craft legislation that both addresses loopholes in our laws that were being exploited and limits the ability of the administration to ignore or abuse their authorities. FAIR also joined with a broad coalition of organizations in supporting passage of H.R. 2.

### Judiciary Committee Bill

The first committee to advance legislation was the House Judiciary Committee, which approved H.R. 2640, the Border Security and Immigration Enforcement Act of 2023, on April 20. The final vote, 23-15, fell essentially along party lines, with one Republican voting with Democrats against the bill. It now awaits action by the full House of Representatives, where it is expected to be approved.

The needed reforms mandated in the bill include provisions that would:

- Reform our asylum process to deter frivolous claims and prohibit gang members, felons and drunk drivers from benefiting from our asylum system;

# Immigration Bill Vote

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- Prohibit the Department of Homeland Security (DHS) secretary from releasing illegal aliens apprehended at our border, strengthening our ability to detain, remove and return those aliens;
- Prevent surges of unaccompanied alien children at the border in a humanitarian way, ensuring they are processed expeditiously with family members and sent home;
- Increase penalties for individuals who overstay their visas;
- Significantly limit the secretary's authority to grant humanitarian parole so that broad, category-based parole programs cannot be established to circumvent Congress; and
- Mandate the use of E-Verify for all employers in a responsible, phased-in way.

The Judiciary bill is aimed at ending the key magnets that have led to the explosion: The ease with which people can abuse our asylum process; the high probability of release into the United States pending a hearing many years in the future; and the incentive to use children – either unaccompanied, or as part of a family unit – to gain entry to the United States. It would also bar this and future administrations from asserting virtually unlimited authority to parole to admit otherwise inadmissible aliens to the country.

## Homeland Security Committee Bill

Four days after the Judiciary Committee approved its bill, the Homeland Security Committee unveiled a bill that would deliver much needed resources to secure our southern border.

H.R. 2794, The Border Reinforcement Act, adds manpower, technology and physical infrastructure needed to regain control of our borders. It would require that money dedicated to border enforcement be used for just that – not for processing, releasing and flying illegal migrants around the country, as the Biden administration has been doing. The bill also requires DHS to collect and disseminate vital information about the people who are encountered crossing the border illegally.

Among the key provisions of the Border Reinforcement Act:

- Requires DHS to resume construction of the border security wall along no less than 900 miles of our southern border.
- Requires that DHS increase manpower to a total of 22,000 Border Patrol agents.
- Provides additional technology at border ports of entry to detect and prevent the entry of narcotics, contraband and illegal migrants.
- Significantly adds aerial and ground technology to surveil the entire southern border.
- Limits the use of DHS's U.S. Customs and Border Protection One phone app to inspection of perishable cargo only.

H.R. 2794 was approved by the full Homeland Security Committee and was merged with the Judiciary and Foreign Affairs Committee bills to form H.R. 2. The combined bill focuses on cutting off incentives to illegal immigration by providing the resources necessary to secure our borders and ensuring that



**The FAIR Immigration Report**  
(ISSN 1067-3337)

Published 10 times a year by the Federation for American Immigration Reform, a non profit membership organization.

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people are expeditiously removed or detained

The Homeland Security bill also provides a preview of the budgetary process for FY 2024. Government funding bills originate in the House and the ones dealing with border and immigration enforcement must be written in a way that ensures that the Biden administration cannot redirect funds to carry out its open-borders agenda.

Realistically, the House bills are unlikely to gain the 60 votes necessary to be approved in the Democratic controlled Senate, much less avoid a veto by President Biden. Nevertheless, the bills provide an important framework that give the American public a clear idea of what can be done to secure our borders and restore integrity to our asylum process. The bills force the Senate leadership and the White House to explain to the American people why they oppose sensible legislation that protects the interests and security of the nation.



## Biden Policies Have Caused a Surge in Unaccompanied Children, But the Agency Charged with Monitoring Their Well-Being Can't Locate 85,000 of Them

Since the Biden administration has come to office, there has been an explosion in the number of unaccompanied children (UACs) entering the country illegally. In FY 2020, the last full year of the Trump administration, 30,557 UACs were apprehended crossing the border between ports of entry. By FY 2022, that figure soared to 149,093. UACs are turned over to the Department of

Health and Human Services' (HHS) Office of Refugee Resettlement (ORR). ORR's Administration for Children and Families (ACF) is then tasked with placing these minors in the care of sponsors.

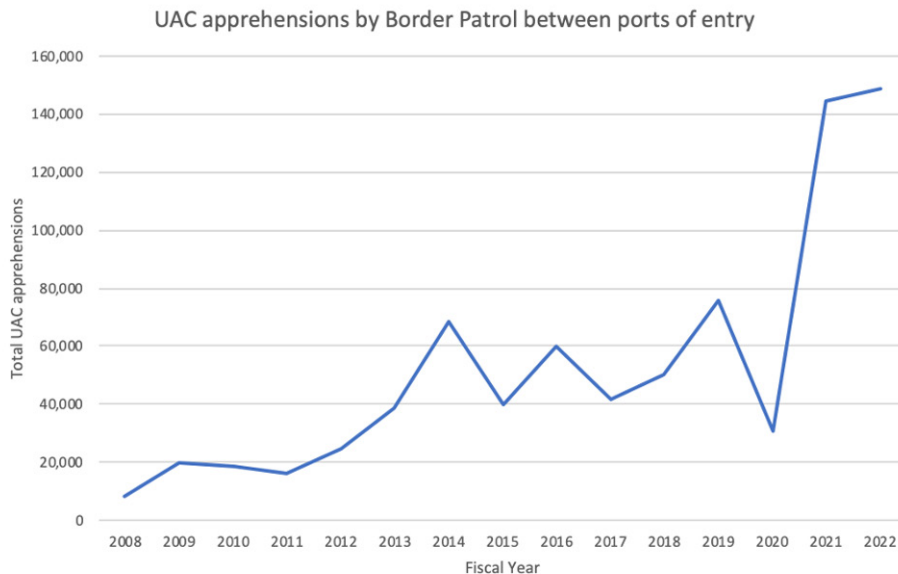
Consistent with its disastrous record of handling all matters pertaining to illegal immigration, the administration has been

equally remiss in ensuring the well-being of the UACs they release from custody. Under an edict from HHS Secretary Xavier Becerra (caught on tape), agency personnel have been instructed to "speed up the assembly line" and release UACs to "sponsors" as quickly as possible. According to an agency whistleblower, HHS personnel who questioned these policies were told



# Unaccompanied Children

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by a department attorney, “We only get sued for keeping them too long. We don’t get sued by traffickers.”

The results of these policies are not just disastrous, but shameful. In many cases, the sponsors to whom UACs are released are members of the criminal cartels that smuggle them into the United States. According to reporting by the *New York Times*, 66 percent of UACs are working at full-time jobs in order to pay off debts to the cartels. Many of the jobs entail difficult or dangerous manual labor. And these kids may be considered the lucky ones. Others – nobody knows how many – fall prey to sex traffickers.

A Florida grand jury, looking at the consequences of these policies, concluded that what is happening is nothing short of government sanctioned child abuse. “In reality, ORR is facilitating the forced

migration, sale, and abuse of foreign children,” charged the grand jury. UACs are being encouraged to “undertake and/or be subjected to a harrowing trek to our border, ultimately abandoning significant numbers of those who survive the journey to an uncertain fate with persons who are largely unvetted. This process exposes children to horrifying health conditions, constant criminal threats, labor and sex trafficking, robbery, rape, and other experiences not done justice by mere words.”

In response to reports of widespread abuse of UACs, the director of the ORR’s Administration for Children and Families, Robin Dunn Marcos, was called to testify before Congress in April. At a hearing before the House Oversight and Accountability Committee, Rep. Paul Gosar (R-Ariz.) confronted Ms. Marcos about reports that

her agency has lost contact with some 85,000 UACs who have been released to the custody of sponsors. Marcos replied that she did not know the precise number of UACs who have disappeared from her agency’s radar screen, adding that ACF’s procedure is to make three phone calls to the numbers provided by the sponsors. It was a response that further infuriated Rep. Gosar, who chastised her for not having information she knew the committee was going to ask about.

In order to address the growing problem of UACs entering the United States, FAIR has called upon Congress to enact legislation that explicitly allows for the prompt removal of UACs. A 2008 law meant to prevent human trafficking has had precisely the opposite effect, virtually assuring that UACs from noncontiguous nations would be allowed to enter the U.S., while a legal settlement agreed to by the Clinton administration requires that UACs be released promptly to sponsors.

Documented evidence that UACs are being abused and trafficked, combined with the Biden administration’s policies that place the prompt release of migrant children ahead of their safety, make it clear that Congress must act immediately.

# Biden Administration Lays Out Plan to “Manage” New Surge of Illegal Immigration After Cancellation of Title 42

*(Editor’s note: This edition of the FAIR newsletter was completed before the official cancellation of Title 42 on May 11. Title 42 is a public health provision that allows for the rapid expulsion of illegal migrants during a public health emergency that was invoked at the onset of the COVID pandemic.)*

For months, the Biden administration has been pressed by members of Congress to present a plan to deal with the surge of illegal immigration expected after the formal end of Title 42 on May 11. Two weeks before it ended, the Department of Homeland Security (DHS) finally rolled out a ‘plan’ that amounts to the same failed policies that resulted in record levels of illegal immigration, only on steroids. DHS’s own estimates indicated that as many as 18,000 migrants a day – 540,000 per month – could attempt to enter the U.S. illegally once the policy was terminated.

As the rollout of the plan, “U.S. Government Announces Sweeping New Actions to Manage Regional Migration,” suggests, the Administration was not even making a pretense that the goal is to prevent or deter even larger numbers of migrants from entering the country. Rather, it is a massive scheme to process migrants and disburse them around the country as quickly as possible.

The effort to ‘manage’ even greater levels of illegal migration further abuses parole authority to admit people who do not have visas and creates new regional processing centers that serve as assembly lines to move people into the United States.

DHS’s plan claims that migrants who cross the border illegally will be subject to expedited removal, but that is a hollow threat that is designed to convince the American public that they are attempting to enforce immigration laws, which they have adamantly refused to do since the day President Biden took office. In reality, it is an open invitation to foreign nationals

to make specious claims for asylum, under which they will be allowed to enter the United States while they wait as long as ten years for a hearing on their cases.

The plan also includes expanded abuse of presidential parole authority to admit people from a growing number of countries who have family members in the United States. Parole is not a lawful pathway for immigrants. The authority to parole foreign nationals who do not have, or do not qualify for a visa, is very limited. The statute explicitly states that it be exercised on a “case-by-case basis” based on some compelling humanitarian or national interest. In addition, it only allows temporary entry and the parolee must depart once the reasons for them being here no longer exist. None of these conditions can possibly be met under the administration’s plan to grant parole to tens of thousands of foreign nationals every month.

Additionally, the administration is planning to double the number of Western Hemisphere migrants who are admitted as refugees, despite the fact that the overwhelming majority are economic migrants. The plan calls for establishing additional “Regional Processing Centers (RPCs) in key locations throughout the Western Hemisphere to reduce irregular migration and facilitate safe, orderly, humane, and lawful pathways from the Americas.” The goal of the RPCs is to process migrants as quickly as possible and move them into the United States, rather than having them cross the border illegally – which looks bad, as the president is now formally seeking reelection. Based on the Biden administration’s track record, very few migrants will be denied entry.

# Surge of Illegal Immigration

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The DHS plan reinforces the urgency of passing the Border Security and Immigration Enforcement Act of 2023, H.R. 2640, that was approved by the House Judiciary Committee in April. That legislation would

make it more difficult to abuse our asylum process; bar this and future administrations from releasing inadmissible migrants into the United States; and end presidential abuse of parole authority.

## Congress Said Illegal Aliens Could Not Qualify for Obamacare. Biden Says They Can

Under our constitutional form of government, the Legislative Branch makes laws and the Executive Branch implements them. Presidents have always had some leeway in determining how to implement laws passed by Congress, but in recent years we have seen presidents completely subvert laws (or ignore them entirely) through executive orders or through the rule-making process.

The latest attempt by the Biden administration to subvert the intent of Congress came in April, when the administration announced its intention to allow Deferred Action for Childhood Arrivals (DACA) recipients to qualify for subsidized health insurance under the Affordable Care Act (ACA), also known as Obamacare. When the ACA was being considered in 2010, Congress debated whether illegal aliens should be eligible for benefits under the programs. They reached an affirmative decision: No. Only people who are “lawfully present” in the United States would be eligible for health coverage under the ACA. A majority of lawmakers felt that granting benefits to illegal aliens would send the wrong message and would also unfairly burden American taxpayers because illegal aliens tended to have low incomes and would therefore qualify for hefty subsidies.

The question of eligibility for DACA beneficiaries never came up, for the simple reason that former President Barack Obama did not (in another blatant example of executive overreach) create the program until two years later, in 2012. By his own admission, Obama acknowledged that DACA beneficiaries are

still illegal aliens, but the status meant that the federal government would defer any effort to remove them from the country.

When the question of whether DACA recipients would be considered lawfully present for the purpose of ACA eligibility, the Obama Administration published a brief amendment to earlier implementing regulations clarifying that DACA recipients were not, in fact, eligible for ACA exchanges. The amendment states: “Exception. An individual with deferred action under the Department of Homeland Security’s deferred action for childhood arrivals process, as described in the Secretary of Homeland Security’s June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition.”

President Biden was, of course, serving as vice president when the amendment excluding DACA recipients from ACA coverage was written. Nevertheless, under this latest move to reward illegal immigration the Department of Health and Human Services (HHS) intends to remove the DACA exception, and therefore render DACA recipients “lawfully present” for purposes of obtaining benefits under the ACA as well as certain Medicaid programs. Some 580,000 illegal aliens currently hold DACA status. Initial cost estimates indicate that granting them access to health coverage under the ACA could add another \$1.5 billion in costs, to the \$151 billion already incurred by American taxpayers to provide benefits and services to illegal aliens and their dependents.

# News from State and Local Operations

## States Enact Anti-Sanctuary Legislation

As many state legislative sessions wrap up for the year, FAIR can report that our work with local immigration reform activists and state legislators resulted in passage of anti-sanctuary laws in several states. State and local efforts to discourage illegal aliens from settling in their jurisdictions is a positive trend, and more states are likely to consider similar measures as Biden administration immigration policies continue to impose unfunded mandates on them.

### West Virginia

Enactment of anti-sanctuary legislation was a year-long effort. FAIR worked with West Virginia activists and with Attorney General Patrick Morrisey's staff, to draft anti-sanctuary bill language that not only banned sanctuary policies but added teeth to the prohibition. House Bill 2008 was introduced by Delegates Todd Longanacre and Margitta Mazzocchi and the Senate version, SB 550, by Senator Mark Maynard. House leadership made HB 2008 a caucus bill, which meant that it was a priority to pass. It was introduced on January 12, was approved by the full House on February 3 by a vote of 87-6.

The Senate received HB 2008 on February 6 where it languished in the Judiciary Committee for a month. Activist groups were told by these legislators that in order for Senate leadership to move the anti-sanctuary bills 21 senators would need to sign onto SB 550 to show support. FAIR issued calls to action from our members to rally support. The efforts paid off and the bill gained momentum with 15 senators cosponsoring the bill, resulting in the bill being brought to the floor for a vote. On March 10, the Senate voted 31-1 in favor of the bill. The next day, the last day of the legislative session, the House voted to concur with the Senate amendments, and the bill was sent to Governor Jim Justice who signed it on March 29.

### Idaho

Idaho became the second state this legislative session to enact an anti-sanctuary bill into law, and this effort came down to the wire. SB 1030 was first introduced in the Senate on January 27. FAIR worked with Idaho sheriffs to garner support for this legislation. As a result, it passed the Senate by a vote of 28-7 on February 22.

The bill was received in the House but sat in committee for a month. FAIR's members and the sheriffs worked to apply pressure on members of that chamber to schedule a hearing. On March 17, the House State Affairs Committee introduced its own anti-sanctuary bill, which was passed by the full House on March 21. The House States Affairs Committee also passed SB 1030 on March 22 and the Senate bill was placed on the House calendar on March 23.

With the session scheduled to adjourn on March 24, passing the bills came down to the wire. Luckily for our efforts, the legislative session was extended for a week allowing time to reconcile the two versions of anti-sanctuary legislation. The final version was signed into law by Governor Brad Little on April 4.

### North Dakota

An anti-sanctuary bill, HB 1155, was introduced by Rep. Matt Heilman when the legislature convened on January 3. Working with Rep. Heilman to build support for the bill, FAIR provided testimony in favor of HB 1155. The bill passed favorably out of committee and then passed the full House on January 16 by a vote of 80-11.

The bill was then referred to the State Senate where it languished in the Local Government Committee for more than a month despite pressure from FAIR members and the bill's sponsor. It was finally set for a hearing on March 30 where it passed favorably. The Senate voted 40-4 in favor of the bill on March 31 and was signed into law by Governor Doug Burgum.



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