

IMMIGRATION REPORT



The Biden Administration's Parole Abuse Amounts to a Parallel Immigration System

Every administration comes to office vowing to be the “most transparent in history,” only to be more opaque than the previous one. The Biden administration is certainly carrying on that tradition, nowhere more so than in providing information about its handling of immigration matters.

From Day One, this administration has done its best to hide the true scope of illegal immigration from the American public. One of the ways they have gone about this is to expand the use of the Executive Branch's parole authority on an unprecedented scale. Those who want to know how many inadmissible foreign nationals have been paroled into the country have to sift through mountains of carefully hidden data. Over the summer, those numbers began to be revealed.

In July, CBS News reported that since President Biden came to office, more than 541,000 otherwise inadmissible aliens had entered the country under parole. That is an astounding number, given that the statutory language granting the Executive Branch such au-

thority. Section 212(d)(5)(A) of the Immigration and Nationality Act states that the secretary of Homeland Security “may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only *on a case-by-case basis* [emphasis added] for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the [DHS secretary] have been served the alien” must leave the country. Based on the language of the statute, the number of people qualifying for parole would be a lot closer to 541 than 541,000.

But as jaw-dropping as the CBS estimate of parolees is, Andrew Arthur of the Center for Immigration Studies contends that the actual number of people granted parole under the Biden administration is nearly 1.44 million! In addition to the administration's wholesale abuse of parole based on specific countries of origin or the use of CBP One phone app, the administration

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has been quietly handing out parole to large numbers of migrants encountered entering the country between ports of entry, i.e. illegal border-crossers. Arthur estimates that as of June 2023, an additional 896,000 inadmissible foreign nationals had been paroled into the United States during the first two and a half years of the Biden administration. Moreover, the administration is attempting to further expand the list of nationalities eligible for special parole programs as well as increasing the use of the CBP One app.

Put in perspective, the number of people allowed to enter under the Executive Branch's very limited parole authority exceeds the population of Dallas, Texas – the nation's ninth largest city. It is also beginning to rival the number of people who are issued green cards

each year under our statutorily established immigration laws. In other words, the Biden administration is abusing its parole authority to create a parallel immigration system without any legal authority to do so. The Constitution vests Congress with plenary authority to establish immigration laws – a power that has been repeatedly affirmed by the U.S. Supreme Court.

FAIR's president, Dan Stein, has repeatedly charged that the current administration is acting lawlessly, and its assertion of limitless discretionary authority to allow as many people as it wants to settle in the United States is a threat not only to the well-being of the American people, but to our constitutional system of government.



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Immigration REPORT

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Biden Requests \$4 Billion in “Emergency” Funding to Deal with a Border Crisis His Administration Denies

Even though President Joe Biden and everyone who speaks on behalf of his administration continue to insist that our borders are under control, the White House is requesting a \$4 billion emergency supplemental appropriation to cover a small fraction of the costs associated with the unprecedented influx of illegal migrants. Notably, all of the additional money sought by the White House would go toward “manag[ing] the Southwest border safely and effectively,” rather than controlling our borders or enforcing laws against those who breach them.

The biggest chunk of the supplemental request, \$2.65 billion, would be earmarked for providing shelter and services to the unending flow of migrants. \$416 million would be used to target fentanyl trafficking, which has surged as border enforcement personnel have been tied up processing and releasing migrants. Another \$600 million dedicated to the Shelter and Services Program (SSP) is clearly an effort to funnel even more money to nongovernmental organizations (NGOs) in their efforts to provide various forms of assistance – including housing, food, clothing, and transportation services to illegal border crossers. These NGOs actively encourage illegal immigration and oppose all manner of border and immigration enforcement. According to a May 2023 report by the Department of Homeland Security’s (DHS) Inspector General, there is very little oversight of how these funds are spent and, not surprisingly, the programs run by the NGOs are often mismanaged.

Additional federal dollars are needed to offset the enormous costs being absorbed by state and local governments as millions of new illegal aliens are disbursed around the country. But FAIR and many members of Congress are adamantly opposed to handing the Biden administration a blank check to fund their illegal open borders policies.

FAIR has called for the additional funding to be conditioned on enactment of H.R. 2, the Secure Border Act, passed by the House of Representatives earlier this year. That bill would restart construction of the border security fence; add thousands of new Border Patrol agents and new technology; reform the much-abused asylum process; end catch-and-release; rein-in abuse of the humanitarian parole and other needed reforms. In order for H.R. 2 to become law, the Democratic controlled Senate would need to pass it and be signed by President Biden.

With the new fiscal year beginning on October 1, the Republican-led House Appropriations Committee has already voted next year’s DHS funding bill out of committee. That bill similarly requires that funds be spent to deter and prevent illegal immigration. All of these provisions and spending priorities will have to be fiercely defended as negotiators hash out their differences with the Democratic-led Senate in September.



Judge Nixes Biden Rule Barring Some Illegal Aliens from Seeking Asylum, While Abuse of Parole Remains Unchecked

The last thing in the world the Biden administration wants is to halt the record influx of illegal immigration to the United States. What they really want – especially as President Biden campaigns for reelection next year – is to make mass illegal immigration less visible to the American public (although that would be a hard sell to anyone walking the streets of Manhattan lately).

To that end, as the administration prepared to terminate Title 42 – a public health provision that allowed for the prompt expulsion of at least some illegal border-crossers – they took several steps. First, they ratcheted up the abuse of the Executive Branch's very limited authority to parole inadmissible foreign nationals into the United States. Second, they ramped up the use of the CBP One phone app, which allows migrants seeking to defraud our asylum system to make an appointment at a legal port of entry, rather than cross the border between ports of entry. In nearly all cases, CPB One app users are allowed to enter the

country, even though only a small fraction have valid asylum claims. Third, on the eve of Title 42's end in May, the administration issued a rule that bars some migrants from making asylum claims. These include migrants who had transited from safe third countries and were subsequently caught entering between ports of entry.

These moves allowed the administration to claim (falsely) that their policies were making dramatic progress in securing the border. Administration officials crowed that Border Patrol encounters of illegal migrants along the Southwest border decreased significantly. In reality, as FAIR pointed out repeatedly, the strategy was designed to reroute as many illegal aliens as possible through airports, land border ports of entry, and even via Canada. Many compliant news organizations dutifully parroted the administration's assertion that their policies were succeeding in reducing illegal immigration, even though the total number of

illegal aliens entering remained more or less constant.

Predictably, the lavishly-funded mass immigration lobby took exception to the administration's loophole-ridden rule that denied some categories of illegal border-crossers to enter asylum claims, and filed a lawsuit to block its implementation. Magically, their case wound up in the courtroom of Federal Judge Jon Tigar, an activist judge with a history of ruling against policies intended to enforce immigration laws. They were not disappointed. On July 25, Judge Tigar sided with the plaintiffs.

The activist groups suing to block Biden's asylum rule argued that it violated the law by restricting the right of illegal border-crossers to apply for asylum. U.S. law allows any foreigner present in the U.S. to apply, no matter how they arrived, *unless* a bilateral safe third country agreement is in place and the foreigner passed through that country. However, the Biden administration scrapped the previous administration's Asylum Cooperative Agreements with several Central American countries through which most illegal crossers travel. In doing so, the administration ended its own best possible legal defense for the policy. The Biden administration's argument for the rule was, incredibly, that the administration is letting in so many illegal aliens and other foreigners through "lawful pathways" that the asylum rule is justified as a means of control.

This incoherent legal defense went over poorly in a court already notable for opposing immigration restrictions of any kind, and Judge Tigar vacated the asylum rule.

The ruling rejects the softest limits on access to the American asylum system, implying that no other country along illegal migration routes could possibly be safe for asylum seekers. For example, the ruling insults U.S. allies like Colombia, calling that country unviable as a safe third country because of a "26,000-case backlog of asylum cases." Naturally, no mention is given to the fact that U.S. immigration courts have a backlog of nearly 2.4 million cases, more than half of those were added since President Biden took office. That backlog allows anyone who applies for asylum in the U.S. to wait years (with work permits) while their case is processed, and for many in the open-borders lobby, that is the end goal.

A three-judge panel of the Ninth Circuit Court of Appeals (by a 2-1 majority) paused Judge Tigar's order vacating the administration asylum. As of the completion of this edition of the FAIR newsletter, consideration of the administration's appeal of Judge Tigar's ruling had not occurred. What is clear, however, is regardless of whether the rule is allowed to remain in place, the administration will use any means at its disposal to encourage asylum abusers to enter the country through other means.

Border States Cry Foul as a Large Share of Migrant Crisis Relief Dollars Flow to Sanctuary Jurisdictions

Even as Congress grapples with an emergency request by the Biden administration for pay for the costs associated with the migration crisis, cities and states are fighting over a vastly insufficient pot of cash approved by Congress last December. As part of the budget reconciliation process during a lame duck session of the 117th Congress, \$800 million was

earmarked to alleviate some of the burdens the border crisis is imposing on state and local governments.

The largest share of those funds has been directed to New York -- \$104.6 million, to be precise -- which has border state officials seeing red. Arizona's Independent Senator, Kyrsten Sinema (who formally

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left the Democratic Party in December 2022) is livid at the White House and the congressional Democratic leadership over how the money is being allocated. Sinema noted that Senate Majority Leader Chuck Schumer and House Minority Leader Hakeem Jeffries both hail from New York City, wondering if that might have something to do with New York's outsized federal bounty. "Now how did that happen?" she asked wryly.



Bowing to its own fiercely defended sanctuary policies and decades-old legal settlements requiring the city shelter anyone who turns up in the five boroughs, New York City is at the receiving end of 10,000 new illegal migrants a month. But neither the city nor the state has taken steps to alter those policies. And even the \$104.6 million that politically influential jurisdiction is Hoovering up, it is a pittance compared with the \$12 billion Mayor Eric Adams expects the city will have to shell out on migrant assistance over the next three years.

Sinema and other disgruntled border state representatives (both Republican and Democratic) do have a legitimate beef with how the woefully insufficient federal assistance is being allocated. But until there is a bipartisan effort to force the Biden administration to secure our borders and end its abuse of humanitarian parole authority, the squabble between border states and interior states over federal assistance amounts to fighting over crumbs.

News from State and Local Operations

Texas

Invoking the old adage, 'If you want to get something done, do it yourself,' Texas Governor Greg Abbott (literally) floated the idea of putting buoys in the Rio Grande river to deter migrants from attempting to ford the dangerous river in an attempt to enter the United States illegally. The buoys are deployed in thousand foot stretches and anchored to the riverbed to prevent migrants from swimming underneath. In a letter to President Biden, Abbott stated, "I have asserted Texas's 'sovereign interest in protecting [its] borders,' he

wrote. "I have done so in my role as the commander-in-chief of our State's militia under Article IV, § 7 of the Texas Constitution." Anticipating accusations that placing barriers in the Rio Grande pose a danger to the migrants, Abbott tweeted that the real dangers stem from Biden policies that "encourage migrants to risk their lives crossing illegally through the Rio Grande."

Predictably, Gov. Abbott's efforts to stop people from attempting to cross the river illegally was met with a lawsuit from the Department of Justice, and joined by the government of Mexico, and an assortment of open



borders advocacy groups. The suit contends that the buoys violate the 1899 Rivers and Harbors Act which bars the creation of any obstructions in navigable waterways (as though the steady stream of people crossing the river is not an impediment to navigation). For now, the buoys remain as Texas continues to protect the interests and safety of its citizenry.

Illinois

Thanks to a bill signed into law in late July by Gov. J.B. Pritzker, many newly arrived illegal aliens could become eligible to become police officers in the state of Illinois. Under House Bill 3751, “an individual who is not a citizen but is legally authorized to work in the United States under federal law is authorized to apply for the position of a police officer, subject to all requirements and limitations, other than citizenship, to which other applicants are subject.”

“Legally authorized to work” is not the same as being a legal resident of the United States, much less a citizen. The people being allowed to enter the country to pursue mostly frivolous asylum claims are illegal aliens, but they are being granted work authorization because they are likely to be here for a long time while they game the system. HB 3751 dovetails nicely with newly inaugurated Chicago Mayor Brandon Johnson’s stated

goal of opening up city employment to immigrant communities, such as becoming police officers. Thus, if Gov. Pritzker’s and Mayor Johnson’s visions for their state and city come to fruition, citizens of other countries who are violating federal laws could soon be enforcing state and local laws against American citizens.

District of Columbia

Mayor Muriel Bowser has been vocal in her complaints every time a busload of migrants turn-up in her city on buses provided by the state of Texas (though, curiously, not when they arrive courtesy of the Biden administration). The nation’s capital already has a huge homeless problem, a dearth of affordable housing and myriad other problems to deal with. But none of that deterred the city council from approving the Local Rent Supplement Program Eligibility Temporary Amendment Act, which prohibits the D.C. Housing Authority from asking about immigration status for local rent supplement vouchers under its Rent Supplement Program. Mayor Bowser chose not to veto the bill, but rather allowed it to be enacted without her signature. Thus, when it comes to helping people find a place to live in a city where rents are soaring, a homeless veteran and an illegal migrant who rolled into town yesterday, will be on the same footing.

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