

IMMIGRATION REPORT



Congress Squandered Opportunity to Secure the Border, As Budget Deadline Approached

The end of the fiscal year provided Congress the perfect opportunity to bring the raging border crisis under control. For a brief moment it appeared that they would respond. In the days leading up to the September 30 deadline, the House of Representatives approved an FY 2024 funding bill for the Department of Homeland Security (DHS). Recognizing that they could no longer hand the Biden administration a blank check to subvert border and immigration enforcement, the DHS spending measure included key provisions of H.R. 2, the Secure the Border Act, which passed in the House in May.

The FY 2024 DHS funding bill approved by the House included many provisions that FAIR has been advocating for (See page 2). The bill:

- Provided over \$2 billion for construction of a physical wall along the southwest border;
- Increased funding to support a record high of 22,000 Border Patrol agents;
- Restored funding for border security technology, including for towers, aerostats, counter drones and new innovative technology;

- Funded ICE’s ability to detain up to 41,500 aliens on a given day (up from 25,000) and provides over \$3.5 billion for custody operations;
- Prohibited funding for the CBP One mobile application that is facilitating the entry of illegal aliens at the border;
- Instructed ICE to continue to utilize the 287(g) program to allow state and local law enforcement to help in enforcing our immigration laws;
- Required the Secretary to prioritize detention and requires that aliens enrolled in Alternatives to Detention be monitored by GPS throughout the duration of their proceedings; and
- Prohibited the administration from implementing a Biden rule to allow asylum officers to make final asylum determinations.

Also significant is what the DHS funding bill did not include. A FAIR-led coalition of public interest groups succeeded in removing two damaging guest worker provisions, relating to the H-2A and H-2B visa programs, which would have dramatically expanded the programs and harmed American workers. Specifically,

At the Urging of FAIR and Coalition Partners, House GOP Leadership Added Border Security Provisions to Government Funding Measure

FAIR and a broad coalition of public interest groups and former high-ranking immigration enforcement officials sent a letter to congressional leaders, on September 14, urging that border security provisions be attached to any measure approved to keep the federal government funded beyond the end of the fiscal year, which ended on September 30. Less than a week later, the House Republican leadership responded by including nearly all of the provisions of H.R. 2, the Secure the Border Act, in a Continuing Resolution (CR).

H.R. 2 was approved by the House of Representatives on May 11, but the Senate has failed to act on this critical legislation to secure our nation's borders. Since then, the unprecedented border crisis touched-off by Biden administration policies has only grown worse, compromising our nation's security and threatening the solvency, safety and stability of communities all across the country.

As the coalition letter pointed out, "Enacting a CR without demanding change would result in the continuation of funding and policies put in place by the disastrous FY 2023 omnibus, which has given the Biden administration the ability to 'manage' a never-ending, self-inflicted crisis by allowing it to entice, guide, process, transport, house, and provide social services to even more illegal aliens."

The House-drafted CR responded to these concerns by setting explicit conditions aimed at ending the Biden Border Crisis. These included resuming border wall construction; closing gaping loopholes in our asylum policies; ending wholesale catch-and-release practices; preventing the surge of unaccompanied children to our borders; and reining in the Biden administration's abuse of parole authority to allow inadmissible aliens to gain entry and work in the United States – all of which were part of H.R. 2.

Please remember FAIR in your estate plans.

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Squandered Opportunity

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those provisions would have 1) removed the seasonal or temporary requirement from the H-2A program, allowing visa holders to work year-round, and 2) exempted “returning workers” from the annual H-2B visa cap.

Facing a potential government shutdown on October 1, because the Democratic-led Senate had not approved a single appropriations bill, House Speaker Kevin McCarthy (R-Calif.) also introduced a Continuing Resolution (CR) to keep the federal government functioning while a final FY 2024 budget deal was worked out. The CR he put before the House also included strong border enforcement language and some of the budget reductions many of his Republican members had demanded. That CR was rejected by 21 Republican members who believed the spending cuts did not go far enough.

As a result, the speaker then introduced a “clean” CR that continued government funding at FY 2023 levels through November 17. This CR included no border and immigration enforcement language and no spending cuts. That measure was approved with the strong support of House Democrats. A day later, just hours before the midnight deadline, the Democratic-led Senate happily approved the House’s CR that allows President Biden and Secretary Alejandro Mayorkas to continue their open-borders agenda, and actually provides them

the opportunity to abuse our immigration laws to help facilitate the entry of illegal aliens.

This squandered opportunity to enact meaningful border enforcement requirements took place against the backdrop of a worsening situation at the border. Only a week before the vote on the original House CR, DHS released new data showing that August set a single-month record for border encounters, and preliminary data indicated that September was on pace to shatter that dubious record.

The CR that was approved gives Congress 45 days to pass legislation that will fund the federal government through September 30, 2024. During that time, FAIR will be working to educate the American public about what is at stake as Congress goes through the appropriations process. Given the magnitude of the Biden Border Disaster, the lost opportunity to include border enforcement language in the CR will add to the damage already done.

Moving forward, FAIR is committed to representing the interests of the American people. We urge FAIR members and supporters to go to our website, www.fairus.org and sign up for updates on the latest developments and information about how to make sure your voices are heard.

August Nationwide Encounters Top 300,000, Highest on Record

More than three weeks into September, the Department of Homeland Security (DHS) finally released its border encounter data for August. All it took is a quick glance at the numbers to understand why they were trying so hard to hide the harsh reality from the American public.

The data revealed that 304,162 illegal migrants were encountered attempting to enter the United States in August, the highest total for any month on record. Moreover, this unprecedented single-month surge occurred during a month in which temperatures along the southern border regularly hit triple digits.

93% of Illegal Aliens, Not Immediately Removed Under Title 42, Were Released Into the U.S.

On countless occasions, Department of Homeland Security Secretary Alejandro Mayorkas has insisted – including in sworn testimony – that his department is faithfully carrying out the border security laws it is charged with enforcing. The Inspector General (IG) of his department says otherwise. A report released by the IG in September indicates that between March 2021 and August 2022, 93 percent of illegal aliens apprehended by the Border Patrol, and not immediately expelled under Title 42 which was still in place during that period, were released into the United States.

The data on illegal aliens released into the country was uncovered in a report that focused on how the Border Patrol and Immigration and Customs Enforcement (ICE) have failed to secure valid mailing addresses for the illegal aliens released into the U.S. The crux of the report is that our immigration agencies can't enforce our laws and ensure illegal aliens are removed if they can't locate the aliens they release. According to the report, DHS has lost (or never had) track of 177,000 illegal migrants they released.

Collecting valid mailing addresses is critical (assuming that the current DHS leadership has any interest in removing them). Still, according to the IG, the Border Patrol, in tens of thousands of instances, either never collected any address, collected a non-residential mailing address (such as a restaurant, a church, a charity, etc.), or collected an invalid mailing address, i.e. not a real address whatsoever.

Here is what the IG found. Between March 2021 and August 2022 (18 months), the Border Patrol apprehended approximately 1.3 million illegal aliens at the southern border. This number excludes those who were expelled to Mexico under Title 42 authority. It also excludes unaccompanied alien minors, who by law must be released to the custody of Health and Human

Services. Thus, the 1.3 million represents single adult illegal aliens and family units apprehended by the Border Patrol at the southwest border.

Of this 1.3 million, the IG revealed that:

- Border Patrol released 430,000 illegal aliens on their own recognizance (i.e. without conditions or surveillance) with a Notice to Appear (NTA) in immigration court;
- Border Patrol released 318,000 illegal aliens with parole and placed them in the Alternatives to Detention (ATD) program, which usually requires a minimal amount of tracking and reporting;
- Border Patrol released 95,000 illegal aliens with a Notice to Report, which means they were not issued an NTA and were simply told to report to an ICE office when they reached their final destinations; and
- ICE released 370,000 of the illegal aliens apprehended by the Border Patrol (without specifying the legal authority used for the release).

So, in total, of the 1.3 million illegal aliens apprehended by the Border Patrol, 1.213 million or 93 percent were released into the United States. Breaking it down, Border Patrol released 843,000, or 65 percent of the total. ICE released 370,000, or 28 percent. While these numbers are staggering, the number of illegal aliens released into the U.S. during this period of time is surely higher if one included the number of aliens released by the Office of Field Operations, which staffs the official ports of entry. Those numbers were not set forth in this report. Nor does it include the Biden administration's flagrant abuse of humanitarian parole, which is supposed to be granted on a case-by-case basis. By some estimates, 1.4 million inadmissible aliens have been paroled into the United States since President Biden took office.

August Encounters

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With the onset of fall and more temperate weather conditions, and no indication on the part of the Biden administration that it will change course, it is likely that even greater numbers of illegal aliens will surge across our borders in the coming months. And, indeed, preliminary estimates issued by the government of Mexico for the first half of September indicated that August's dubious record will be short-lived.

After taking credit for reductions in illegal alien encounters along the Southwest border after canceling Title 42 – the COVID-era provision that allowed for the prompt expulsion of some migrants – illegal crossings have come roaring back. In August, DHS reported 232,972 encounters between the Pacific Ocean and the

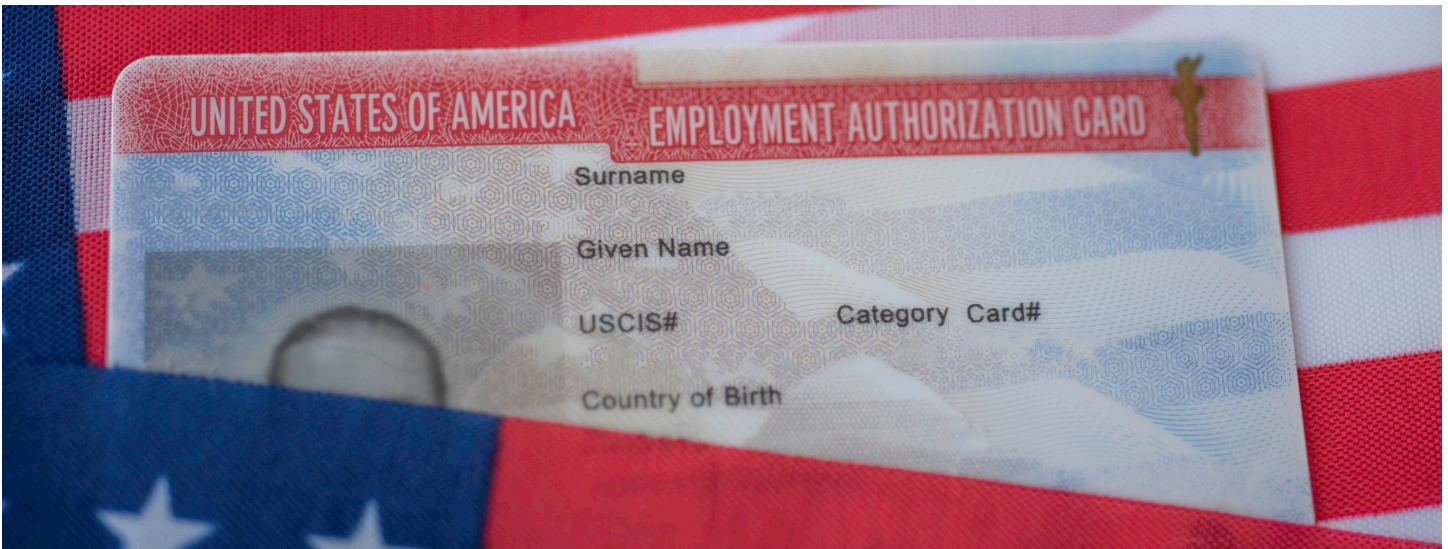
Gulf of Mexico, an increase of some 50,000 over July.

Encounters of family units jumped to 116,721 in August, the highest in four years, while the number of unaccompanied children increased to 14,259. Under Biden administration policies, virtually all of these families and unaccompanied children are quickly released into the United States. Even before the September data was tallied, total encounters for FY 2023 had reached 2,860,127, which had already eclipsed the totals for FY 2022. When September's numbers are included, it is certain that the FY 2023 encounters will exceed 3 million, not including hundreds of thousands of 'gotaways.'

Mayor Eric Adams: Migration Crisis “Will Destroy New York City.” New York City’s Congressional Delegation: ‘Let’s Make It Worse’



New York City is reeling from the impact of more than 125,000 new illegal aliens who have taken up residence in the Big Apple over the past year, with thousands more arriving by the week. The city's beleaguered mayor, Eric Adams, could not have expressed the magnitude of the crisis in more dire terms. “Never in my life have I had a problem that I did not see an ending to. I don't see an ending to this. This issue will destroy New York City. All of us are going to be impacted by this. I said it last year when we had 15,000, and I'm telling you now at 110,000. The city we knew, we're about to lose.” The cash-strapped city expects it will spend \$12 billion to provide for the needs of these new illegal aliens over the next three years.



Biden Administration Expedites Work Authorization for Illegal Aliens

As the border crisis intensified over the summer, resulting in newly-arriving illegal aliens overwhelming many cities and states – particularly in Democratic strongholds – local officials intensified their demands that the Biden administration find a way to grant work authorization to migrants more quickly. That demand was echoed by 103 House Democrats in a letter to President Biden in early September.

By statute, asylum-seekers are required to wait 180 days before they can receive work authorization. The intent of that law was to discourage economic migrants, seeking jobs, from entering bogus asylum claims if they knew they would have to wait six months before they could work legally in the United States. The overwhelming majority of asylum-seekers are economic migrants who are abusing our asylum policies.

It didn't take long for the Biden administration to yield to the pressure and find a convenient way to circumvent the waiting period for work authorizations. To do so, they resorted to taking advantage of another much-abused policy: Temporary Protected Status (TPS). In September, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas extended and “re-designated” the country of Venezuela for Temporary Protected Status (TPS). The announcement will make approximately 472,000 Venezuelans eligible for TPS benefits, including protection from deportation and work permits.

The “re-designation” is clearly intended to cover the flood of new Venezuelan migrants who arrived in recent months. It comes on top of an existing TPS authorization which

was renewed in September 2022 and runs through March 2024, for Venezuelans who were in the U.S. at that time. Thus, the administration “re-designated” Venezuela for TPS. And, each time a country is designated, the nationals of that country physically present and living in the U.S. are shielded, often automatically, from deportation. This means that the hundreds of thousands of Venezuelans who illegally entered the U.S. after the first declaration of TPS – a stunning 472,000 – will now also be shielded from deportation and receive work permits.

The notion of “re-designating” a country for TPS has no basis in law. The notion that the government could, without statutory authority, “re-designate” a country by simply using the original emergency – for the purpose of giving work

authorization and protection from deportation to people who were not in the U.S. at the time of the first designation – is outrageous – but is par for the course for the Biden administration.

Almost certainly, Venezuela will not be the only country receiving TPS designation (or re-designation)

as means to make an end run around the work authorization waiting period for employment authorization. The Venezuelan re-designation was followed almost immediately by an extension and re-designation for Afghanistan. Other nationality groups are already clamoring for similar consideration from the administration.

Rather than quelling the crisis that threatens to destroy places like New York City, hastening the issuance of work authorization and further abusing TPS will only add to the incentive for economic migrants to arrive in the U.S. and enter fraudulent asylum claims.

NYC Migration Crisis

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The mayor's pleas were met with a sharp stab in the back, led by his own congressional delegation in Washington. Within days of Mayor Adams' predicting the demise of New York City, 103 House Democrats sent a letter to President Biden urging him to further abuse executive authority that would incentivize even more illegal immigration. Among the 103 Democratic House members signing the letter to the president, were 10 members who represent New York City – led by Rep. Jerrold Nadler and Alexandria Ocasio-Cortez.

The House Democrats urged the administration to waive the statutorily-mandated 180-day wait for asylum-seekers to gain work authorization and grant it immediately. Since nearly all of the asylum-seekers are, in fact, economic migrants, immediate work authorization would likely increase the number of bogus asylum claims. Additionally, they asked the president to further abuse “humanitarian parole” to accommodate more illegal aliens, and increase the number of nationality groups eligible for Temporary Protected Status. And for illegal aliens already here, these House members asked the administration to streamline cancellation of removal procedures and encourage more illegal aliens to apply for relief.

Many of those same New York House members showed in Manhattan a few days later to try to sell their plan to the public and were greeted with what could be politely described as a Bronx Cheer. As each member

came before the television cameras and microphones in front of the Roosevelt Hotel that has been turned into a migrant shelter, they were drowned out by angry constituents fuming about the toll the migration crisis was taking on their city. In addition to the more than 200 shelters that have sprung up across the city, many residents had just sent their kids back to public schools that were being forced to absorb 21,000 new non-English-speaking migrant children, with no plans for how they were going to educate any children under those circumstances.

Notwithstanding his dire assessment of the situation in New York, Mayor Adams has yet to call for an end to New York City's status as a sanctuary for illegal aliens. Nor has he been willing to directly confront the Biden administration over policies that are directly responsible for his city's plight. Instead, he attacked the “madman down in Texas,” referring to Gov. Greg Abbott, even though about 13,000 of the 110,000 who have arrived in New York arrived courtesy of the Texas governor.

While New York, like countless communities all across the country, deserve relief from the consequences of the Biden Border Crisis, it is hard to see how they will get it when their own federal and local representatives are intent on making the problem worse.

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The Combined Federal Campaign (CFC) allows Federal employees from all over the country to easily make a tax-deductible donation by payroll deduction, credit card, check or cash.

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