



## **Biden’s Open Border Policies Force More States to Consider Immigration Bills in 2023**

By Shari Rendall

The Biden administration’s open borders policies have made a mockery of our nation’s immigration laws. By the end of Biden’s term, the number of illegal aliens entering the United States is on pace to reach 11.5 million, not including an additional 2.2 million “gotaways.”

Of course, the Biden policies alone are not to blame. In 2023, Congress was marginalized by its inability to enact any legislation to make the real policy changes needed to address the crisis and secure our borders. The House of Representatives passed H.R. 2 in May, a ground-breaking piece of immigration-enforcement legislation. The Senate, however, has not taken up H.R. 2, despite the fact that many Senators – Democrats and Republicans – have publicly stated they support tightening our nation’s immigration laws. Senate Republicans are currently negotiating policy changes to for inclusion in the foreign aid package requested by President Biden. Whether those negotiations will result in meaningful reform remains to be seen. Senators in both parties have remained remarkably silent on the negotiations over the holidays, even as the crisis is growing at the southern border.

With an unprecedented number of people streaming into the country, and no sign of it stopping, our cities and states have become strained to near breaking points. The administration’s policies spurred states into action with nearly 1,000 immigration bills introduced in 2023. These bills varied widely from state to state. The legislatures in both Texas and Florida followed the leads of their governors to pass strong immigration enforcement bills. On the flip side, the California legislature passed, but the governor vetoed, the Home Act, Harmonizing Our Measures for Equality. This bill would have prohibited state prisons from providing release information, detaining, or transferring to ICE criminal aliens who are being released as a result of recently enacted “criminal justice reform laws.” The California legislature also considered but did not pass The Safety Net for All Workers Act which would have given illegal aliens, who are laid-off from jobs that they are not even entitled to fill, \$300 per week for up to 20 weeks.

In 2023, FAIR’s state and local engagement team worked with legislators, sheriffs, Angel families, and activists to pass bills that put Americans first by enforcing our immigration laws and opposed efforts to provide those in the country illegally additional benefits. In addition, FAIR fought against policies that acted as a magnet to attract more illegal immigration into the states.

### **Anti-sanctuary Bills**

Among FAIR’s top legislative priorities in 2023 to combat illegal immigration and protect communities were the passage of anti-sanctuary bills. These bills would prohibit jurisdictions from employing dangerous policies that provide a safe-haven, or “sanctuary,” in which illegal aliens can work and live without fear of apprehension by federal immigration authorities.

FAIR led successful efforts in West Virginia, Idaho, and North Dakota to enact anti-sanctuary laws. In both Indiana and New Hampshire, anti-sanctuary legislation successfully passed one chamber.

The enactment of anti-sanctuary legislation in West Virginia was a year-long journey. Working with Attorney General Patrick Morrissey's staff and West Virginia activists, FAIR helped draft anti-sanctuary bill language. The House bill, HB 2008, was introduced by Delegates Todd Longanacre (R-Greenbrier) and Margitta Mazzocchi (R-Logan) and the Senate version, SB 550, by Senator Mark Maynard (R-Wayne). House leadership made HB 2008 a caucus bill, which meant the proposal was a priority to pass. It was introduced on January 12, rapidly advanced through the Judiciary Committee on January 31, and then the full House on February 3.

The Senate received HB 2008 on February 6 where it languished in the Judiciary Committee for a month. In order to jump start anti-sanctuary efforts, FAIR presented at two activist groups in West Virginia where several legislators were also in attendance. These legislators conveyed that in order for Senate leadership to move the anti-sanctuary bills, twenty-one senators would need to show support by signing onto the anti-sanctuary bill.

In response, Delegate Mazzocchi garnered support from her legislator colleagues, while FAIR activated its grassroots members. However, it was not until FAIR, the West Virginia activists and the bill's sponsors made a concerted effort to talk to every senator that the bills gained momentum. The Senate Judiciary Committee held a hearing on March 8, amended the bill, and then passed it favorably out of the committee on March 9. On March 10, the Senate voted 31-1 in favor of the bill. The next day, the last one of the legislative session, the House voted to concur with the Senate amendments and the bill was sent to Governor Jim Justice (R) who signed it on March 29.

Idaho became the second state during the 2023 legislative session to enact an anti-sanctuary bill into law. It was a hard-fought battle as FAIR's efforts to get the legislation across the finish line came down to the wire. After the anti-sanctuary bill (SB 1030) was introduced on January 27, FAIR worked with Idaho sheriffs to garner support and move this legislation. It initially moved quickly. The Senate voted to pass SB 1030 on February 22, but when the bill reached the House, it stalled. The anti-sanctuary bill was referred to the House State Affairs Committee and the Chair was not inclined to move the Senate bill but rather wanted to move one that her Committee had introduced instead.

With the session scheduled to adjourn on March 24, passing the bills came down to the wire. FAIR called on sheriffs and activists to apply pressure on the House to move the legislation forward. Luckily, the legislative session was extended for a week, and, on March 31, SB 1030 passed the House by a vote of 53-10 with seven representatives not voting. Governor Brad Little (R) signed SB 1030 into law on April 4.

In North Dakota, the anti-sanctuary bill also moved very quickly at first. When the legislature convened on January 3, HB 1155 was introduced by Representative Matt Heilman (R-Bismarck). It was referred to the House Political Subdivisions Committee and set for a hearing on January 12. FAIR submitted 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.

On February 13, the passed House bill was referred to the Senate State and Local Government Committee where it languished for over 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 Governor Doug Burgum (R) signed the bill into law on April 7.

## **Comprehensive Immigration Enforcement Bills**

Besides anti-sanctuary efforts, FAIR relentlessly advocated for the strong immigration enforcement bills in both Florida and Texas.

In Florida, FAIR backed the comprehensive immigration enforcement bill that targeted non-governmental organizations that help to smuggle illegal aliens into the state, invalidated out-of-state driver's licenses given to illegal aliens, codified the executive order mandating E-verify for government contracts, required E-Verify for all companies with 25 or more employees, compelled all employers to verify an individual's employment eligibility within three days of starting the job, and made using a false ID to get employment a third degree felony.

In Texas, FAIR supported the six immigration enforcement bills that were passed and enacted during the regular legislative session as well as the two bills passed during the fourth special session. During the regular session, Texas enacted legislation that authorized the Texas military department to use drones on the southern border, gives border patrol agents who complete certain training the powers of a Texas peace officer to arrest and conduct search and seizures at ports of entry or border patrol checkpoints, that compensates landowners for damages to agricultural land caused by individuals committing a "border crime," enhances the Department of Public Safety training for border operations, and designates drug cartels and other similar groups as "foreign terrorist organizations" under state laws and adds them to organized crime offenses.

In the special session, Texas enacted one bill that would appropriate \$1.54 billion to fund "border security operations and the construction, operation, and maintenance of border barrier infrastructure." The other bill creates a state crime of illegal immigration in Texas. It prohibits the entry of any alien from a foreign nation into Texas except at an official port of entry. Under the bill, aliens charged with illegal entry have several defenses including the alien was granted lawful presence, asylum, or DACA by the federal government, or that the alien's conduct did not violate the federal statute prohibiting illegal entry (8 USC 1325). The first offense would be classified as a misdemeanor and a second or subsequent offense would be a felony.

With the ink barely dry on the comprehensive immigration enforcement bills in both Florida and Texas, lawsuits were filed by open borders advocates who do not want to restrict individuals entering the United States. FAIR's legal arm, the Immigration Reform Law Institute, has already filed an [amicus brief](#) in the Florida federal district court supporting the law.

While FAIR played a key role in pushing strong immigration enforcement legislation in 2023, we also were instrumental in fighting the open borders' agenda in several states.

## **Opposing Driver's Licenses for Illegal Aliens**

One of the biggest pushes by the open borders advocates is to have states provide driver's licenses to illegal aliens. While open borders advocates previously argued that granting driver's licenses to illegal aliens enhances road safety, they have since dropped that pretense and instead claim that providing illegal aliens with driving privileges brings them out of the shadows and uplifts their "dignity and security" by allowing them to "be productive and participate in their community." These advocates completely ignore the reality that giving illegal aliens driver's licenses is bad public policy and undermines the purposes and objectives of federal immigration law such as the REAL ID Act. The goal of the REAL ID Act was to ensure that those in the country illegally with the intent to do us harm, like the 9-11 terrorists, are not provided with the documents to facilitate their heinous missions.

During the 2023 legislative session FAIR successfully battled driver's license bills in Arkansas, Georgia, Idaho, Indiana, Nebraska, and New Hampshire. Minnesota was the only state in 2023 to grant driver's licenses to illegal aliens.

Successfully fighting the driver's license bill in Arkansas clearly demonstrated how FAIR was able to act as a key resource for legislators. FAIR immediately engaged our grassroots activists and submitted testimony opposing the driver's license bill. After submitting FAIR's testimony, several first-term legislators reached out to FAIR for additional information. Using FAIR's talking points, they were successful at holding the bill. Unfortunately, that was not sufficient to kill it. The legislation was amended and set again for a hearing in committee. FAIR was able to stave off the second attempt to move the bill. Once again, the bill was amended in committee. FAIR again engaged top activists in the state, including an Angel mom, and stopped the action in the committee. There was one last ditch effort by the bill's proponents before the driver's license bill ended up dying when the legislature adjourned sine die.

### **Opposing Detention Ban Bills**

In addition to bills to provide driver's licenses to illegal aliens, FAIR also battled detention ban bills in several states. These bills restrict immigration detention by prohibiting state and local governmental entities efforts to contract with ICE as well as prohibiting any new private detention facilities.

The detention ban bills are a relatively new strategy by open borders advocates seeking to end immigration detention in the states. California was the first state to pass such a ban, followed by Illinois, New Jersey, Washington and Maryland. In 2022, California's detention ban law that prohibited private detention facilities was found to be unconstitutional by the Ninth Circuit Court of Appeals. In the Seventh Circuit, the Court upheld Illinois's detention ban. The Third Circuit Court of Appeals is currently considering a lawsuit challenging New Jersey's law.

In 2023, bills were introduced in Colorado, Georgia, New Mexico, New York, Pennsylvania, and Rhode Island. FAIR successfully opposed these bills in every state but Colorado.

Since becoming a sanctuary state a few years ago, Colorado has become progressively more akin to California with respect to its immigration policies. In Colorado, the detention ban bill prohibited state and local governmental entities from contracting with ICE as well as prohibited any new private detention facilities. FAIR vociferously objected to the bill, submitting testimony in opposition and engaging our sheriffs and grassroots activists. Despite FAIR's efforts, Governor Jared Polis (D) signed the detention ban bill into law on June 6.

Like Colorado, New Mexico, which is a Democrat trifecta, introduced a bill to ban state and local governmental entities from contracting with ICE as well as prohibiting the establishment of any new private detention facilities. As FAIR did in Colorado, we submitted testimony opposing the bill and engaged our sheriffs and activists. However, unlike in Colorado, FAIR's efforts were rewarded and this bill failed in the Senate by a 17-21 vote.

### **Opposing Bills to Allow Illegal Aliens to Become Law Enforcement Officers**

FAIR unsuccessfully led efforts in both Illinois and Colorado to oppose legislation that would allow illegal aliens to become police officers. Ironically, these bills permit individuals who entered the United States illegally to enforce the law and arrest citizens.

These laws have mostly been geared to allow Deferred Action Childhood Arrivals (DACA) to become police officers. However, in Colorado, the law is expanded to include individuals who have applied for asylum so long as they are qualified to possess a firearm. In Illinois, to become a police officer, illegal aliens must have work authorization and be able to possess firearms or DACA and be able to possess a firearm to become police officers.

### **Looking Forward to 2024**

While most state legislatures have not yet convened for 2024, FAIR has already been tracking pre-filed bills in the states, and similar to 2023, there is a huge divide between the legislation being introduced in the states. One thing is fairly certain: with the ongoing border crisis, immigration will continue to be a hot issue in the states. FAIR has been working with legislators on bills in key states to bolster immigration enforcement. We will also continue to work on anti-sanctuary legislation in other states, especially those where the legislation only made it through one chamber. On the flip side, FAIR has already seen state bills that will grant driver's licenses to illegal aliens, allow illegal aliens to become police officers, and give illegal aliens professional or occupational licenses. While most legislative sessions will be shorter because of the election year, they will not be any less busy especially since the Biden administration shows no real sign of addressing the catastrophe at the border. Get ready to rumble.