

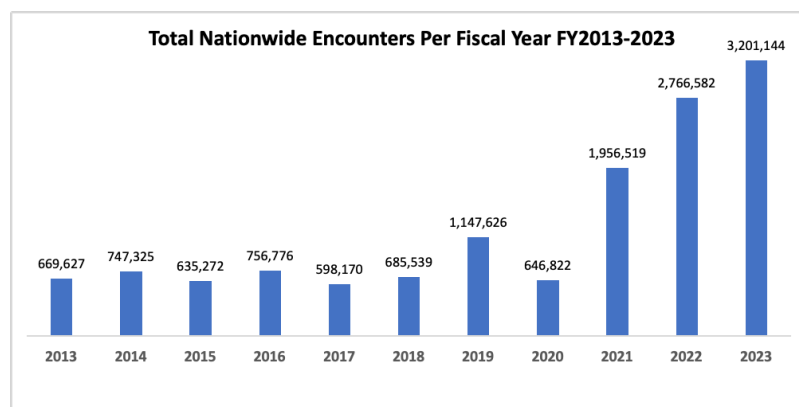


From the Border to Our Nation’s Capitol: Administration Policies Wreak Havoc, Forcing Congress to Respond

By Government Relations

Since inauguration day, the Biden Administration has ignored the law and allowed for the massive catch and release of illegal aliens to further their open borders agenda. Data from fiscal year (FY) 2023 highlights the impacts that these reckless policies have had on the American people and communities across the country. President Biden and Department of Homeland Security (DHS) Secretary Mayorkas’ lack of enforcement has allowed cartels, drug traffickers and human smugglers to make record profits, yet again in 2023.

Under Biden’s watch, more than 8 million illegal aliens have been apprehended at our borders, and at least another 1.7 million “gotaways” have evaded Border Patrol. In FY23 alone, more than [3.2 million illegal aliens](#) were encountered at our borders – setting a record that one should not be proud of. That number represents a nearly fivefold increase from FY 2020, the last full year of the Trump Administration. The daily and monthly apprehension records were also both broken multiple times in the last year, with more than 341,000 aliens apprehended in September and more than 12,600 apprehended on a single day in December.



Illegal immigration in recent years has been spurred by the ability to obtain work permits and stay in the United States, especially if one claims asylum. In FY22, the Administration approved more than [2 million work permits](#), up from [1.6 million](#) in FY21. And the current backlog for work permits in the federal government stands at more than [1.5 million](#).

The number of asylum applications pending is at a record high, with nearly 938,000 pending (at the end of 2023) before immigration judges at the [Executive Office for Immigration Review](#)

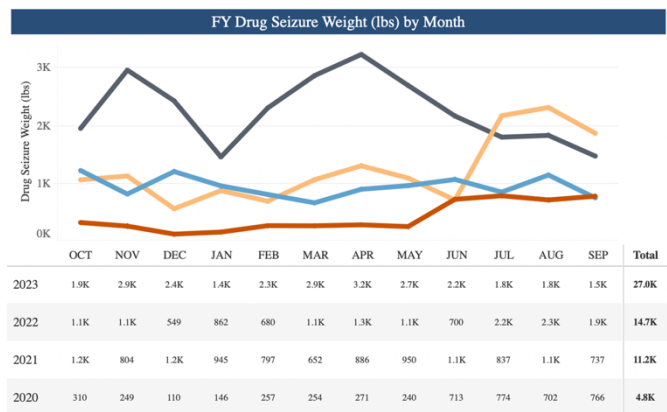
(EOIR) and another 1.05 million pending with [U.S. Citizenship and Immigration Services \(USCIS\)](#). USCIS received 35,610 new asylum applications in October of this year alone. The agency only completed 8,271 cases in the same month. Of those completed, 3,903 were granted. Only 353 were denied or referred to an Immigration Judge. In 2023, nearly 479,000 new asylum applications were filed with EOIR. This combined total of asylum cases means it may be 10 years before one’s asylum claim is adjudicated. According to the [Executive Office for Immigration Review](#), “For inactive pending cases, the average length of time a case has been administratively closed is 6,199 days (approximately 17 years) and the median length of time is 4,346 days (approximately 12 years). It has become clear that frivolous claims of asylum are a driving factor of the border crisis.

Fiscal Year 2023 also set records with regard to potential terrorists attempting to enter the country through our porous borders. According to DHS data, [172 aliens](#) on FBI’s Terrorist Data Screening Set (TSDS) were encountered crossing illegally. Additionally, [over 70,000 Special Interest Aliens \(SIA\)](#) have been encountered by U.S. border agents between October 2021 and October 2023. [Special Interest Aliens \(SIAs\)](#) are travelers to the U.S. who have engaged in suspicious travel patterns or other activity that suggests a possible threat to national security. The SIAs encountered at our borders included 6,386 Afghans, 3,153 Egyptians, 659 Iranians, and 538 Syrians.



One of the most tragic results of today’s unprecedented border crisis is its toll on children and families. Under President Biden, the number of UACs encountered at the border has skyrocketed to more than four times the total of Fiscal Year (FY) 2020. In 2023, nearly 140,000 unaccompanied children were encountered –an average of 378 children each day.

Another tragedy on American communities due to the Biden Administration’s open borders is the record fentanyl overdoses and lives lost due to the drugs pouring across the border. In 2023, nearly 30,000 pounds of fentanyl were seized (up from less than 5,000 pounds in FY 2020), of which 99 percent of all fentanyl seized nationally was seized at the southwest border.



On top of the mass catch-and-release processes put in place by the Biden Administration, those who gain entry are allowed to remain in the country without fear of removal.

Secretary Mayorkas has used Temporary Protected Status (TPS) as a de facto amnesty tool, deviating significantly from the original intent of the law of allowing those who could not return to their home countries due to emergencies such as civil strife or natural disasters. The Secretary used his discretion to extend and expand protection to more than 330,000 people, notably from El Salvador, Honduras, Nepal, Nicaragua, Haiti and Sudan. According to the [Congressional Research Service](#), as of September 30, 2023, approximately 697,530 foreign nationals from 16 countries are living in the United States protected by TPS.

The Biden Administration also continues to create unlawful parole programs that allow illegal aliens and foreign nationals to enter, live, work, and remain in the United States in contravention of our laws. The law limits the granting of immigration parole only for “urgent humanitarian reasons or significant public benefit,” yet the Biden Administration under Secretary Mayorkas has defied the express language of the statute and distorted the original intent of parole authority beyond recognition, turning it into a backdoor to bring in limitless numbers of otherwise inadmissible aliens and misleadingly portraying this abuse as some kind of “lawful pathway.”

In April 2023, the Biden Administration expanded the Central American Minors parole program, which [FAIR](#) explained was nothing more than a shadow family immigration program, created through wholesale usurpation of Congress’ plenary authority over immigration and in open violation of the parole statute.

In January 2023, the Biden Administration launched a new program to parole up to [360,000 otherwise inadmissible](#) migrants annually from Cuba, Haiti, Nicaragua, and Venezuela. This program allows illegal aliens to book a spot and fly right into the interior of the country, where they are released with minimal oversight. This followed the illegal parole programs the Biden Administration had already established for Afghans and Ukrainians.

In November, Secretary Mayorkas [announced](#) a new family reunification parole program for foreign nationals from Ecuador, claiming it would “promote family unity” and help “promote safe and orderly migratory pathways.” This program is modeled in part after similar programs for nationals of Cuba and Haiti.

In total, the various categorical “parole programs” created by the Biden Administration have [let in over 540,000 illegal aliens as of July 2023](#), and that number is set to increase with further programs being rolled out. Administration statements and the media alike call this “legal immigration” and claim that the process is “lawful and orderly,” both of which are absolutely untrue.

Not only are the numbers astonishing, but the fact is that President Biden and Secretary Mayorkas are intent on continuing their mass catch-and-release policies. There are roughly [6.2 million known illegal aliens](#) in the country on the non-detained docket (aliens not in custody waiting for their court date), 2.9 million than when Biden became president and including [more than 400,000 known criminal aliens](#). Yet, detention facilities sit empty, with [less than 40,000 being detained](#). In

other words, not only is the Administration not detaining illegal aliens, it is not even detaining known criminal aliens.

Unbelievably, the Biden Administration under Secretary Mayorkas only removed 142,580 illegal aliens in FY23. In other words, while nearly 9,000 illegal aliens were encountered every day, the Biden Administration only removed 389 per day. To top it off, there are at least [16.8 million illegal aliens](#) in the country, many working illegally at the expense of American workers, costing American taxpayers [more than \\$151 billion annually](#).

In the face of the Biden Administration's lawless open-borders policies, FAIR has continued to fight to secure our borders. Along with helping to pass important legislation, FAIR has remained engaged on the regulatory front, analyzing proposed rules and submitting comments calling for their withdrawal.

On Capitol Hill

House Passage of H.R. 2, the *Secure the Border Act*. On May 11, 2023, the same day that President Biden terminated Title 42 authority to expel illegal aliens at the border, the House passed the [Secure the Border Act](#) by a vote of 219-213. FAIR worked with House leadership and congressional offices to make sure the bill was strong from the beginning and not watered down as it went through the committee process. It was a monumental achievement and an important step towards ending the Biden Administration's border crisis. The bill not only provides the Department of Homeland Security (DHS) with the manpower, infrastructure and technology it needs, the bill also includes critical statutory reforms to deter people from coming here illegally. Among other key provisions, the *Secure the Border Act*:

- ❑ Restarts construction of the border wall;
- ❑ Adds thousands more Border Patrol agents, provides them needed resources, and gives them bonuses for working night and day to keep our nation safe;
- ❑ Provides additional technology at border ports of entry to detect and prevent the entry of narcotics, contraband and illegal aliens;
- ❑ Reforms our asylum process to deter frivolous claims and prohibit gang members, felons and drunk drivers from benefitting from our asylum system;
- ❑ Ends catch-and-release by strengthening our ability to detain, remove and return those aliens to their home country or another safe country;
- ❑ Prevents unaccompanied alien children surges at the border in a humanitarian way, ensuring they are screened and processed expeditiously with family members and sent home;
- ❑ Ends the DHS Secretary's authority to grant humanitarian parole, so that broad, category-based parole programs cannot be established to circumvent Congress; and
- ❑ Mandates the use of E-Verify for all employers in a responsible, phased-in way.

House Passes H.J. Res. 24, a Resolution to Overturn D.C. Bill that Would Allow Illegal Aliens to Vote in Local Elections. On February 9, 2023, by a bipartisan vote of 260-162, the House passed [H.J. Res. 24](#), a joint resolution from Rep. James Comer (R-KY) disapproving of the District of Columbia Council passing the Local Resident Voting Rights Amendment Act (D.C. Act 24-

6400). In passing the resolution, the House began [a process](#) in accordance with the D.C. Home Rule Act allowing Congress to strike down legislation passed by the D.C. Council within a certain time period and prevent it from becoming law. The D.C. bill passed the City Council by a vote of 12-1 on October 18, 2022, and allows aliens who have been “residents” in D.C. for 30 days to vote in local elections. The Senate refused to bring the resolution up, allowing the DC legislation to go into effect next year. In simple terms, the Local Residents Voting Rights Amendment Act weakens American sovereignty and dilutes the voting power of American citizens by granting voting rights to the estimated [50,000 non-citizens residing in D.C.](#), including [over 20,000 illegal aliens](#). FAIR continues to support efforts to prevent illegal aliens and non-citizens from voting in U.S. elections.

Senate Approves S.J. Res. 18, a Resolution to Overturn Biden’s Public Charge Regulation.

On May 17, 2023, the U.S. Senate voted in favor of [a joint resolution](#) to nullify the Biden Administration’s final rulemaking related to the public charge ground of inadmissibility, a long-standing policy of United States immigration law that requires immigrants to be self-sufficient. Since the 1800s, our nation has required foreign nationals seeking admission to the United States to show that they will be able to care for themselves without becoming a “public charge,” or a burden on the taxpayers. The Biden Administration’s [public charge rule](#) went into effect in December 2022. As written, it makes a mockery of the law and the intent of Congress to ensure that immigrants are self-sufficient. The Biden Administration will not consider the receipt of many public benefits when looking at an immigration application or petition – instead, they will only consider cash benefits and long-term institutionalization at government expense. FAIR helped lead the charge for Senators to vote in support and continues to advocate for changes to the law. The final vote of the Senate resolution to stop the Biden rule passed 50-47, with several Democrats crossing the aisle to vote with Republicans.

House Approves H.R. 3941, the *Schools Not Shelters Act*. The House passed the [Schools Not Shelters Act](#) in July 2023, in response to New York City Mayor Eric Adams’ plans to use public schools to house migrants through the summer of 2023. [Fox News](#) reported that this extreme measure was being considered because every other shelter in the city was struggling to handle the number of aliens that have shown up at the sanctuary city’s doorstep. Sanctuary cities are increasingly relying on non-sanctuary jurisdictions to step in for damage control when their policies backfire, unfairly shifting the fiscal burden of illegal aliens.

Blocking the S.232, the *Afghan Adjustment Act*. Congress passed the *National Defense Authorization Act (NDAA)* on December 14, 2023, a “must-pass” bill debated every year to authorize defense spending for the country. In recent years, the bill has become an opportunity to attach policy riders and provisions not directly related to defense, some years including immigration measures. Importantly, several harmful immigration provisions, such as S.2327, the [Afghan Adjustment Act \(AAA\)](#), were successfully blocked from inclusion in the NDAA. The AAA bill would provide green cards for thousands of Afghan nationals, which [fails to include adequate vetting and background checks](#).

Congressional Oversight

House Homeland Investigation into Secretary Mayorkas. In June, the House Homeland Security Committee released a [preliminary majority report](#) titled “Causes, Costs, and

Consequences: Why Secretary Mayorkas Must Be Investigated for His Border Crisis.” The report marked the beginning of [an investigation](#) into DHS Secretary Alejandro Mayorkas for his dereliction of duty.

The Committee’s investigation examining Secretary Mayorkas’ failure to enforce our immigration laws, and the consequences of that failure, is laid out in five phases:

- **Dereliction of duty:** examining the abuse of our immigration laws and defied court orders;
- **Empowered drug cartels:** documenting the increase in cartel violence, drug trafficking, and human trafficking;
- **Human costs:** considering the rise in drug overdoses, increase in criminal activity, and lives lost to violence;
- **Rising dollar costs:** reviewing the high price of illegal immigration, including costs in areas like healthcare, education, and law enforcement; and
- **Firsthand accounts:** hearing from key inside sources on how the law is being abused.

Since launching the investigation in June, the Homeland Security Committee has held multiple hearings and issued individual reports on all phases of the investigation. The report on dereliction of duty can be found [here](#), drug cartels [here](#), human costs [here](#), dollar costs [here](#), and firsthand accounts [here](#). In the coming weeks, the Committee will finalize its investigation and make recommendations on next steps, including potentially impeaching Secretary Mayorkas.

Congressional Hearings. FAIR worked with leaders in the House and Senate as they analyzed several critical immigration issues, providing background, research and comments for the record. Committees in the House and Senate conducted oversight in many areas, including: Unaccompanied Alien Children, Border Crisis Impact on American Communities, Financial Costs of Mayorkas’ Open-Border Policies, Threats to the Homeland, Examining the Immigration Courts, Terrorist Entries at the Southern Border, and Consequences of Criminal Aliens on Communities.

Regulatory Engagement

This year, FAIR has been active in providing comment on regulations proposed by the Biden Administration, including those listed below.

Joint Asylum Rule. In February 2023, DHS and the Department of Justice (DOJ) issued a joint proposed rule entitled “[Circumvention of Lawful Pathways](#)” to amend the asylum process for people who enter the country illegally or through our ports of entry. In plain terms, the rule prohibits aliens from applying for asylum if they have traveled through several safe countries without seeking asylum before arriving in the United States. It also creates a rebuttable presumption that a person is ineligible for asylum in the United States if they enter without proper documentation. The real objective of this proposed rule is not to enact true border security measures or to end large-scale asylum abuse, but rather to cover up the extent of the crisis so that the Biden Administration can continue implementing open borders policies. The only real restriction the rule places on asylum-seekers, the overwhelming majority of whom have unfounded or false claims, is that they must now make an appointment, using an official mobile app, to claim asylum at a port of entry. Even this requirement, however, is swallowed up with open-ended

exceptions. FAIR recommended that the rule be withdrawn and effective policies from 2017-2020 be implemented again. To read the FAIR's full public comment, [click here](#).

Healthcare Benefits for DACA Recipients Rule. The Biden Administration [announced](#) in April 2023 that DACA recipients would soon be eligible to apply for benefits under the Affordable Care Act (ACA) and some Medicaid programs, following up shortly with a [proposed rule](#). Those benefits would include access to ACA healthcare exchanges (commonly known as Obamacare), Medicaid, and the Children's Health Insurance Program (CHIP) for pregnant women and children. Our laws clearly provide that Congress holds authority over immigration law and that the Obama Administration acted unlawfully in creating DACA. Proceeding to expand benefits eligibility for DACA recipients not only perpetuates the unlawful program but also provides benefits to recipients that they may come to rely on, only to have them rescinded. FAIR strongly recommended in its comment that the Department of Health and Human Services (HHS) remove DACA recipients from the definition of "lawfully present" for the purposes of benefits eligibility. To read the full comment, [click here](#).

Administrative Closure in Immigration Cases Rule. In September 2023, the Biden Administration put forward a [proposed rule](#) that would allow the immigration judges to administratively close cases without any clear limits. This would result in the widespread use of such closures as a form of non-enforcement policy. When judges "administratively close" cases, they simply put them back into the file drawer without making a decision on the merits. Cases that are administratively closed are taken off the active docket and are no longer seen as part of a backlog. For some illegal aliens, administrative closure serves as a way to pause cases while they apply for legal status or another form of legal relief. But for many illegal aliens, administrative closure is an opportunity to pause their cases indefinitely to avoid receiving a denial of asylum and a deportation order. FAIR urged the Administration to withdraw their rule. To read the full comment, [click here](#).

Unaccompanied Alien Children Rule. In October 2023, the Biden Administration published a [proposed rule](#) related to processing, housing, and caring for unaccompanied alien children who come across the border without a parent or legal guardian. From FY21-FY23, [nearly 440,000 UACs were encountered by Customs and Border Protection](#) (CBP). The Administration's policy regarding the care, and release of UACs has failed on many accounts. Unfortunately, the Unaccompanied Children Program Foundational Rule would advance more of the same policies, and promote the mass processing and release of UACs rather than prioritizing their safety and security. The proposed rule does nothing to prevent UACs from being released to strangers and potential criminals, traffickers, and abusers. FAIR argued that the regulation implements ill-advised policies that would seriously jeopardize the safety of unaccompanied alien children by aiming to process and release as many as possible, as quickly as possible. To read the full comment, [click here](#).

Modernizing the H-1B Visa Program Rule. In October 2023, Biden's DHS published [an expansive regulation](#) to amend the policies and procedures related to the H-1B program. The rule exempts certain foreign workers from the annual numerical cap, encourages adjudicators to give deference to prior approvals, changes the definition of "specialty" workers, and allows for automatic extensions for certain students who plan to adjust to an H-1B visa. The proposed

regulation not only hurts American workers but it undermines the integrity of the program and will encourage more fraud. The proposed rule barely gets to the heart of the H-1B visa fraud and abuse schemes that undermine the intent of the program. While the Administration claims the new rule will “modernize” the long-plagued H-1B visa program, instead it undermines American workers. To read the full comment, [click here](#).

What's Next

With respect to illegal immigration, 2023 has proven to be a year of many records – especially with 3.2 million total illegal aliens encountered at our borders and a record 12,000 illegal aliens encountered in one single day.

In his nearly three years in office, Secretary Mayorkas has implemented destructive and dangerous policies – many in direct contravention of the laws he swore to uphold – to carry out the President’s open-borders agenda. Our borders are out of control because Mayorkas refuses to enforce nearly every law designed to secure our borders and protect the homeland. The crisis is of his own making, and his failed leadership has betrayed the American people. In 2024, the House of Representatives is poised to consider impeachment articles against Secretary Mayorkas, which FAIR supports.

Further, the threats resulting from a porous border – from drug cartels to human traffickers to potential terrorists – make it clear that Congress must force President Biden and his administration to protect our homeland by passing H.R. 2, the *Secure the Border Act*.

Funding for various departments and agencies will run out in the weeks ahead, and Congress is set to consider a supplemental foreign aid package for U.S. allies around the world. As it readies to reconvene this month, Congress must not only consider funding for the Department of Homeland Security, but it must realize that funding alone won’t solve the crisis.

FAIR has called on congressional leaders to pass meaningful border security reforms, not just provide billions more to President Biden and Secretary Mayorkas to continue their open-borders agenda. The border crisis and the challenges instigated in 2023 call for immediate action from the House and Senate as we look to 2024.

To read FAIR’s analysis of Secretary Mayorkas’ leadership, [visit this page](#). To view FAIR’s toolkit and learn how to get involved, [click here](#).