

The Senate's Non-Existent Border Security Proposal Is a Stalking Horse for Massive Ukraine Funding

Background: The Senate is attempting to develop a significantly weakened border security bill to dislodge a larger supplemental spending package for Ukraine, Israel, and Taiwan. While the details are still being negotiated, a bipartisan proposal based on previous iterations is unlikely to include genuine asylum reform, safe third country protocols, or an end to destructive “catch and release” practices. And the Biden administration is likely to ignore any framework that is passed.

House Republicans remain largely united in their support for H.R. 2 (Secure the Border Act) as the best solution to the Biden border crisis. The bill takes a comprehensive approach that includes border barrier construction, increased Border Patrol agents, and enhanced removal powers, as well as immigration and enforcement provisions, to fully curtail asylum abuses.

If *any* of the below red lines are crossed, that is, the Senate fails to incorporate a substantive provision needed to actually secure the border—provisions already passed by the House of Representatives—the legislation must be rejected. As an important disclaimer, the Senate proposal remains in development behind closed doors and the provisions within it remain fluid.

Red Line: Failing to End Asylum Abuse

- **H.R. 2:** The bill conditions eligibility for asylum on arrival in the United States at a port of entry and possession of no criminal convictions for certain crimes. Further, it tightens the criteria for establishing credible fear from merely a “significant possibility” to a “more likely than not” determination.
- **Senate Proposal:** Though speculative, current reports suggest the Senate agreement is likely to implement weak “fixes” to asylum loopholes that do not solve the problem, an effort to simply remove the talking point while claiming to have addressed the issue in a bipartisan fashion.

Red Line: Failing to Reinstate Safe Third Country Protocols

- **H.R. 2:** The bill requires DHS to remove aliens seeking asylum to safe third countries where they can apply for asylum, without the current necessity for bilateral agreements with those countries. This section also makes aliens ineligible for asylum if they have traveled through at least one country outside their country of citizenship, nationality, or last habitual residence en route to the United States.
- **Senate Proposal:** Currently, the Senate proposal provides for safe third country arrangements only if a pre-existing bilateral agreement is in place, effectively nullifying the very purpose of the Migrant Protection Protocols, and relying on the Biden administration to devote diplomatic bandwidth to an initiative it does not support.

Red Line: Failing to End Catch and Release

- **H.R. 2:** The bill mandates that aliens be returned to a contiguous country for the pendency of their immigration proceedings if they cannot be detained or removed to a safe third country.
- **Senate Proposal:** Reports suggest the Senate bill is unlikely to maintain turn away authority or end “catch and release” as a practice.

Red Line: Failing to Repatriate Unaccompanied Alien Children (UACs)

- **H.R. 2:** The bill requires that UACs, pending no evidence of trafficking and no claim of credible fear, be safely and expeditiously returned to their country of origin. Further, a process is set up for those who are victims or claim credible fear to have their hearings within two weeks.
- **Senate Proposal:** Reports suggest the Senate bill is unlikely to maintain a repatriation mandate or timely adjudication process for UACs.

Red Line: Failing to Defund Corrupt NGOs

- **H.R. 2:** The bill prohibits funding to any non-governmental organization (NGO) that facilitates or encourages illegal activity, including illegal entry, human and drug trafficking, or human and drug smuggling. NGOs cannot receive funds to provide or facilitate transportation, lodging, or immigration legal services to inadmissible aliens.
- **Senate Proposal:** Reports suggest the Senate bill is unlikely to cut off funding to entities facilitating illegal immigration into the United States.

Red Line: Failing to Limit CBP One App

- **H.R. 2:** The bill limits the use of the CBP One Mobile Application—a key mechanism for both processing and increasing asylum claims that bog down border agents—or any similar program, to inspection of perishable cargo. Apps cannot be used for processing aliens.
- **Senate Proposal:** Currently, the Senate bill does not impose restrictions on the CBP One App being used for asylum claim processing and parole determinations.

Red Line: Failing to Strengthen Border Barriers

- **H.R. 2:** The bill mandates that the Secretary of Homeland Security impede illegal immigration through the construction of physical border barriers that would include the construction of no fewer than 900 miles of border wall along the southwest border.
- **Senate Proposal:** It remains unclear if the Senate proposal maintains the minimum border barrier/wall construction requirement and past proposals have attempted to replace actual border walls with towers and technology (“border infrastructure”).