



Primer: The Senate “Border Security Bill” Is Worse Than The Existing Border Crisis

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Summary

Since President Biden and Vice President Harris took office in January 2021, there have been 10.1 million encounters of foreign-born individuals at America’s borders, and more than 8.2 million encounters at the Southwest border. By comparison, Customs and Border Protection (CBP) recorded around 3.1 million such encounters nationwide from 2017-2020.¹ These figures do not take into account the estimated 2 million illegal aliens since 2021 who successfully evaded federal agents and disappeared into the interior of the United States. Encounters are the sum of any interaction with a removable noncitizen by CBP’s Office of Field Operations (OFO) or U.S. Border Patrol (USBP).²

In February, Senate negotiators, led by Senator James Lankford (R-OK), released a “bipartisan border security bill”³ aimed at addressing the crisis at the U.S. southern border. The bill is “bipartisan” in only the loosest sense of the term as only four Republican Senators voted to move the bill forward the first time when it was coupled as part of a massive foreign aid package.⁴ When the Senate later attempted to move the bill forward as a standalone provision following its initial floor failure, it received only a single Republican vote.⁵

Proponents of this bill deceptively argue that it will discourage illegal aliens from coming to the United States. However, a closer analysis reveals that the measure will not only fail to appreciably stem the tide of illegal border crossings, but will provide perverse incentives to increase it. It remains important to emphasize that the Senate bill was originally part of the \$118 billion foreign aid package that included billions for Ukraine, Israel, and Taiwan, clearly demonstrating that U.S. border security remains an inconvenient afterthought for the D.C. uniparty powerbrokers.⁶ While the foreign aid portion of the package eventually moved forward without the “bipartisan border security bill” attached, the border security framework can still be

¹Chairman Mark Green (July 8, 2024). “Border Crisis Startling Statistics,” *House Committee on Homeland Security*.
<https://homeland.house.gov/wp-content/uploads/2024/08/July-24-Startling-Stats.pdf>

²Office of Homeland Security Statistics (September 2024). “Glossary,” *U.S. Department of Homeland Security*.
<https://ohss.dhs.gov/glossary#:~:text=Encounters%3A%20The%20sum%20of%20U.S.,authority%20by%20USBP%20or%20FO>

³Senator Murphy (May 16, 2024). “S.4361 - Border Act of 2024,” *Congress.gov*.
<https://www.congress.gov/bill/118th-congress/senate-bill/4361>

⁴United States Senate (February 7, 2024). “Roll Call Vote 118th Congress, 2nd Session,” *United States Senate*.
https://www.senate.gov/legislative/LIS/roll_call_votes/vote1182/vote_118_2_00039.htm

⁵United States Senate (May 23, 2024). “Roll Call Vote 118th Congress, 2nd Session,” *United States Senate*.
https://www.senate.gov/legislative/LIS/roll_call_votes/vote1182/vote_118_2_00182.htm

⁶Desjardins, L. (February 6, 2024). “What’s in the Senate Sweeping \$118 Billion Immigration and Foreign Aid Bill?,” *PBS News*.
<https://www.pbs.org/newshour/politics/whats-in-the-senates-118-billion-border-and-ukraine-deal>

advanced by Majority Leader Chuck Schumer (D-NY) for the remainder of this Congress or can be moved next Congress if Vice President Harris wins the November elections.⁷

Vice President Harris, when running for president in 2019, pledged to take four executive actions if elected that would give 2 million so-called “Dreamers” (illegal aliens brought to the U.S. as minors) a path to citizenship and shield more than 6 million undocumented aliens from deportation. Also, newly discovered footage shows then Senator Kamala Harris, chanting "down, down with deportation" at a parade in Los Angeles in 2018 when she was pursuing more aggressively extreme progressive positions on immigration.⁸

Since then, Harris has refused to articulate whether she still supports these radical policies. However, Harris’s spokesperson Ian Sams told Axios: “As president, she’ll continue to protect Dreamers while also pushing the bipartisan border deal that will dramatically strengthen border security.”⁹ As discussed above the border bill is a vehicle for the mass importation of illegal aliens and this is an admission by Vice President Harris that the status quo will not change under a Harris administration.

Senate Bipartisan Border Security Bill Provisions

The Senate bill incorporates numerous policies that undercut the stated purpose of the bill and exacerbate the ongoing crisis along the U.S. southern border. Specifically, provisions in the bill include:

- **Weak Emergency Authority:** The Department of Homeland Security (DHS) is given a new emergency authority to prohibit entry into the U.S. for **certain** illegal aliens. The emergency authority sunsets after three years.
 - DHS *could use* the authority if the 7-day average number of cumulative encounters of inadmissible migrants within 100 miles of the southwest border is at least 4,000 per day. DHS would also be *required* to use the authority if the weekly average number of encounters is at least 5,000 a day or if encounters exceed 8,500 in a single day. However, the bill still requires DHS to continue processing at least 1,400 migrants per day across all southwest land ports of entry.¹⁰
 - This new authority basically signals a concession that 5,000 apprehensions per day (1.825 million per year) is an acceptable level of illegal immigration. In the 13-year period between FY 2007 and FY 2019, agents apprehended on average 1,354 illegal migrants per day—just 27 percent of what this “emergency authority” would allow through statutory approval. This proposal

⁷Rappaport (August 6, 2024). “The big lie about the ‘bipartisan border security bill,’ *The Hill*. <https://thehill.com/opinion/4812643-border-act-2024-reforms-biden/>

⁸Shaw, A. (September 23, 2024). “Video resurfaces of Harris chanting ‘down with deportation’ at 2018 parade with disgraced actor.” *Fox News*.

<https://www.foxnews.com/politics/video-resurfaces-harris-chanting-down-deportation-2018-parade-disgraced-actor>

⁹Thompson, A. and Kight, S. (September 23, 2024). “Harris mum on her past pledge for “Dreamers,” *Axios*.

<https://www.axios.com/2024/09/23/harris-dreamer-protections-immigration>

¹⁰Lee (February 5, 2024). “BGOV Bill Summary: Senate Border Deal & Security Supplemental,” *Bloomberg Government*. BGOV Bill Summary_ Senate Border Deal & Security Supplemental.pdf

far exceeds historical averages and effectively legitimizes illegal immigration in federal statute.¹¹

- This will create intense political pressure to provide citizenship to the mass amount of illegals crossing the border and residing inside the United States.
- On June 4, 2024, the Biden administration issued a presidential proclamation limiting entry across the border.¹² Specifically, this action instructs DHS to exercise entry limitation authority when average daily crossings surpass 2,500 over a 7-day consecutive period. While this remains exceptionally bad policy, this action underscores the deception that the Senate bill is “necessary” to give the President the tools needed to secure the border and also highlights just how paltry the Senate bill’s trigger of 4,000 illegal crossings per day is by way of comparison. Further, the Biden executive proclamation is arguably less harmful because the trigger threshold is lower and unlike the Senate bill, it doesn’t codify into statute an illegal immigration floor.
- DHS will have to suspend the authority within 14 days of the weekly average number of encounters dropping below 75 percent of the initial encounter levels that authorized the emergency power.¹³ This significantly reduces the effectiveness of the authority and further codifies high levels of illegal immigration.
- This authority does not count any unaccompanied alien children from non-contiguous countries, suspected trafficking victims—which could include children trafficked by the cartels—aliens who are determined “exempted” based on decisions by ICE, or aliens who meet screening criteria for asylum.¹⁴ These exemptions will likely help the cartels when it comes to human trafficking and will provide stronger incentives for that industry to both operate and expand.
- The DHS Secretary is prohibited from activating the authority for more than 270 days, 225 days, and 180 days in calendar years one, two, and three.¹⁵
- The President could also reopen the border any time it is in “the national interest” to suspend the border emergency authority for up to 45 days.¹⁶

➤ **Perverse Incentives:** Aside from weak emergency authority, the bill includes several policies that arguably worsen the border crisis.

¹¹CIS (May 28, 2024). “Analysis of the Senate Border Bill,” *Center for Immigration Studies*.

<https://cis.org/Fact-Sheet/Analysis-Senate-Border-Bill>

¹²Joe R. Biden (June 4, 2024). “A Proclamation on Securing the Border,” *The White House*.

<https://www.whitehouse.gov/briefing-room/presidential-actions/2024/06/04/a-proclamation-on-securing-the-border/>

¹³Lee (February 5, 2024). “BGOV Bill Summary: Senate Border Deal & Security Supplemental,” *Bloomberg Government*.
BGOV Bill Summary_ Senate Border Deal & Security Supplemental.pdf

¹⁴Senator Mike Lee (February 5, 2024). “Senator Lee Releases “Dirty Dozen” Disasters in So-Called “Border Deal,” *lee.senate.gov*.

<https://www.lee.senate.gov/2024/2/senator-lee-releases-dirty-dozen-disasters-in-so-called-border-deal>

¹⁵Morgan, Homan, Edlow, and Ries (February 5, 2024). “The Senate Border Bill Is a Disaster for Border Security,” *The Heritage Foundation*. <https://www.heritage.org/homeland-security/report/the-senate-border-bill-disaster-border-security>

¹⁶Lee (February 5, 2024). “BGOV Bill Summary: Senate Border Deal & Security Supplemental,” *Bloomberg Government*.
BGOV Bill Summary_ Senate Border Deal & Security Supplemental.pdf

- The bill codifies catch-and-release protocols. Currently, the law stipulates that any alien who illegally enters the U.S. while pursuing asylum protection must be detained. However, the bill redefines “detention” to “noncustodial detention”¹⁷ and provides the DHS Secretary authority to release almost any alien if they express “credible fear” of persecution or the intent to apply for “protection determination.”¹⁸
- This bill does nothing to curb the Biden administration’s abuse of parole authority (an executive power that allows the government to temporarily admit migrants who don’t qualify for a visa), and expands it by granting parole to anyone the DHS Secretary determines has an “urgent humanitarian reason” to stay and any “culturally important purpose warranting the alien’s presence in the United States on Tribal land located at or near an international land border.”¹⁹
- This bill empowers U.S. Citizenship and Immigration Service (USCIS) officers to grant asylum without review by an immigration judge, ensuring significantly higher approval rates and further weakening an already weak adjudication process.²⁰ Existing asylum standards and processes are already so diluted that the statutory criteria under the Immigration and Nationality Act (INA) have been rendered almost entirely obsolete. For example, nearly 80 percent of illegal aliens pass low credible fear screening despite having dubious claims to religious or political persecution, but then never show up to immigration court.²¹
- The bill includes \$1.4 billion for the Shelter and Services Program, which provides FEMA grants to non-governmental organizations (NGOs) that provide shelter, transportation, legal advice, and other services to illegal aliens.²² These NGOs have expanded their role in facilitating the illegal immigration industry under the guise of “humanitarian aid.” Since 2019, their federal grant funding has increased from \$30 million per year to \$800 million in 2023.²³ This bill increases taxpayer-funded reimbursements to non-federal entities to facilitate illegal immigration by 4,567 percent compared to 2019 funding levels, greasing the palms and enriching organizations profiting off the human misery and suffering.²⁴
 - Nongovernmental organizations have played a vital role in the mass importation of illegal aliens. The Center for Immigration Studies reported in January that a United Nations-led “Regional Refugee and Migrant Response Plan (RMRP)” called for more than 200 nonprofit groups to dole out \$1.6 billion in cash debit cards, food, clothing, medical treatment,

¹⁷Morgan, Homan, Edlow, and Ries (February 5, 2024). “The Senate Border Bill Is a Disaster for Border Security,” *The Heritage Foundation*. <https://www.heritage.org/homeland-security/report/the-senate-border-bill-disaster-border-security>

¹⁸Senator Mike Lee (February 5, 2024). “Senator Lee Releases “Dirty Dozen” Disasters in So-Called “Border Deal,” *lee.senate.gov*. <https://www.lee.senate.gov/2024/2/senator-lee-releases-dirty-dozen-disasters-in-so-called-border-deal>

¹⁹*Ibid.*

²⁰*Ibid.*

²¹U.S. Department of Justice (September 19, 2024), “Credible Fear and Asylum Process (FY2008-FY2019),” *Executive Office for Immigration Review*. <https://www.justice.gov/eoir/file/1216991/dl>

²²Senator Mike Lee (February 5, 2024). “Senator Lee Releases “Dirty Dozen” Disasters in So-Called “Border Deal,” *lee.senate.gov*. <https://www.lee.senate.gov/2024/2/senator-lee-releases-dirty-dozen-disasters-in-so-called-border-deal>

²³Gilmer, E. (July 6, 2023). ““Good Samaritan” Groups at Border Draw GOP Critics Over Funding,” *Bloomberg Government*. <https://about.bgov.com/news/good-samaritan-groups-at-border-draw-gop-critics-over-funding/>

²⁴Webster, E. and Singer, A. (August 31, 2023). “Migrant Assistance Through the FEMA Emergency Food and Shelter Program (EFSP),” *Congressional Research Service*. <https://sgp.fas.org/crs/homsec/R47681.pdf>

shelter, and even “humanitarian transportation” during 2024 to millions of U.S.-bound aliens in 17 Latin American nations and Mexico.²⁵

- The bill asserts that it provides \$650 million for “building the border wall.” But this is a classic budget gimmick as the legislation simply rescinds the money and puts it back in at a later date (FY2028). This will significantly delay construction.²⁶

- **Harmful Visa Measures:** Additionally, the Senate bill creates new and expanded pathways for non-citizens to enter the United States under approved visas.
 - The measure authorizes an additional 250,000 immigrant visas from FY 2025 through FY 2029. That would include 32,000 per year for family-based visas and 18,000 per year for employment-based visas.²⁷ This would further displace American workers with cheap foreign labor.
 - Amnesty is provided to 60,000 poorly vetted Afghans who were brought to the U.S. because of the Biden administration’s disastrous withdrawal from Afghanistan in 2021.²⁸

Taken together, the policies in the Senate bill permanently endanger American citizens for the benefit of violent international cartels and human trafficking networks. A sober analysis of the legislation shows that the “bipartisan Senate bill” creates statutory legitimacy for the practice of human trafficking, codifying specifically approved levels of illegal immigration currently being facilitated by the very cartels killing American citizens in record numbers through fentanyl smuggling.

Furthermore, the Senate bill solidifies the operational infrastructure for permanent invasion within the United States by amplifying interior magnets through the expansion of visas, greenlighting “catch and release,” rewarding NGOs with billions in taxpayer grants to keep the human trafficking industry within the false prism of “humanitarian aid,” and statutorily eviscerating any meaningful limits to asylum claims.

Perhaps most concerning is the very real likelihood that cartels will simply meter out their human trafficking operations to stay “under” the new statutory cap of how many non-citizens the United States will happily allow to cross into its borders. This will create new pathways for moving drugs and people surreptitiously past federal agents.

If passed, all of this will occur with the approval of the United States government and the very elected officials supposedly there to represent the interests of citizens from whom their legitimacy derives. The “bipartisan Senate border bill” is arguably one of the most cynical and

²⁵Bensman, T. (January 30, 2024). “Biden Admin. Sends Millions to Religious Nonprofits Facilitating Mass Illegal Migration,” *Center for Immigration Studies*.

<https://cis.org/Bensman/Biden-Admin-Sends-Millions-Religious-Nonprofits-Facilitating-Mass-Illegal-Migration>

²⁶Senator Mike Lee (February 5, 2024). “Senator Lee Releases “Dirty Dozen” Disasters in So-Called “Border Deal.” *lee.senate.gov*. <https://www.lee.senate.gov/2024/2/senator-lee-releases-dirty-dozen-disasters-in-so-called-border-deal>

²⁷Lee (February 5, 2024). “BGOV Bill Summary: Senate Border Deal & Security Supplemental,” *Bloomberg Government*. BGOV Bill Summary_ Senate Border Deal & Security Supplemental.pdf

²⁸CRA Staff (September 13, 2021). “Primer: Afghan Culture is Prohibitive for Assimilation,” *Center for Renewing America*. <https://americarenewing.com/primer-afghan-culture-is-prohibitive-for-assimilation/>

intentionally hostile pieces of legislation toward American citizens that has been introduced in recent years.

The Real Border Security Bill

The Secure the Border Act of 2023 (H.R. 2) fully demonstrates the underlying policy failures of the Senate bill. On May 11, 2023, the House of Representatives passed one of the strongest border bills ever written. The House-passed H.R. 2 increases border security and closes many loopholes used by the Biden-Harris administration. It restores several Trump-era policies including the Migrant Protection Protocols (commonly referred to as Remain in Mexico) and reconstitutes funding for border barrier construction. The legislation is the new standard for proper border security legislation.

According to analysis by the Congressional Budget Office, the bill would “impact” the “legal status” of an estimated 4.4 million people who would be denied parole status and required to leave the United States.²⁹ This is most likely a very conservative estimate given the dynamic increase in illegal border crossings in the last four years and the expanded parole criteria being used by federal agencies to move non-citizens deeper into the interior of the country.

Below are some key provisions within H.R. 2 that contrast against the harmful policies in the “bipartisan” Senate bill:

- **Strengthens Border Barriers**
 - 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.³⁰
- **Defunds Corrupt NGOs**
 - 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.³¹
- **Ends Asylum Abuse**
 - 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.³²
- **Ends Catch and Release**

²⁹Swagel, P. (May 9, 2023). “Cost Estimate for H.R. 2, Secure the Border Act of 2023,” *Congressional Budget Office*.
<https://www.cbo.gov/system/files/2023-05/hr2.pdf>

³⁰Citizens Staff (November 30, 2023). “The Senate’s Non-Existent Border Security Proposal Is a Stalking Horse for Massive Ukraine Funding,” *Citizens for Renewing America*.
<https://citizensrenewingamerica.com/issues/the-senates-non-existent-border-security-proposal-is-a-stalking-horse-for-massive-ukraine-funding/>

³¹Ibid.

³²Ibid.

- 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.³³
- **Reestablishes Third Country Protocols**
 - 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.³⁴
- **Mandates E-Verify**
 - Requires E-Verify. The bill requires companies to electronically verify employment eligibility. It also allows DHS to bar a business from receiving federal contracts, grants, or other cooperative agreements, if they repeatedly violate the requirements.³⁵

Opponents of H.R. 2 have attempted to characterize it as “the definition of political theater, of one side sitting in a room by itself, writing what it wanted, not even thinking of how you pass a bill.”³⁶ To the extent such a characterization is correct, one might posit that to be a feature as opposed to a bug, given the political support for open borders animating many progressives. Though, it is ironic that, unlike the egregiously flawed and destructive “bipartisan border bill” introduced in the Senate, H.R. 2 has actually passed a chamber of Congress.

Any conversation discussing border security should begin and end with legislation that is already pending, that has already passed one chamber of Congress, and that actually implements the policies that will end the chaos to protect the American people. If enacted into law, H.R. 2 would close off many of the avenues being utilized to pour millions of illegal aliens into American communities, severely curb the human trafficking and drug operations of violent international cartels operating in Central and South America, implement permanent statutory changes to bolster security infrastructure along our southern border, and end the taxpayer-infused revenue stream enriching NGOs while millions of people—American citizens and illegal aliens alike—suffer.

Concluding Assessment

In most public statements about the Senate bill, President Biden has indicated that the legislation is essential for securing the border and that he as President cannot fully act without it.³⁷ This

³³Ibid.

³⁴Ibid.

³⁵CBO Cost Estimate (May 9, 2023), “H.R. 2, Secure the Border Act of 2023,” Congressional Budget Office.

<https://www.cbo.gov/publication/59151>

³⁶ Senator Chuck Schumer (May 22, 2024). “Majority Leader Schumer Floor Remarks On Tomorrow’s Senate Vote On The Bipartisan Border Act Months After Republicans Blocked Action On Border Security,” *Senate Democrats*.

<https://www.democrats.senate.gov/news/press-releases/majority-leader-schumer-floor-remarks-on-tomorrows-senate-vote-on-the-bipartisan-border-act-months-after-republicans-blocked-action-on-border-security>

³⁷White House Press Statement (January 26, 2024). “Statement from President Joe Biden On the Bipartisan Senate Border Security Negotiations,” *The White House*.

<https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/26/statement-from-president-joe-biden-on-the-bipartisan-senate-border-security-negotiations/>

could not be further from the truth as it was President Biden, through numerous executive actions,³⁸ that rolled back nearly all the successful Trump-era restrictions that curbed the flow of illegal immigration into the United States. Specifically, it was President Biden's rollback of Trump-era policies that ended the "Remain in Mexico" protocols, halted construction of the border wall, abolished safe third-country asylum agreements, and nixed Title 42 public health authorities.³⁹ The Biden-Harris administration has manufactured the border crisis through its own destructive actions and could easily reverse them. Further, the administration could even take steps to use the U.S. military to end the crisis as there is ample support in our Constitution and laws that would justify such actions.⁴⁰

The Senate bill is a Trojan horse designed to create an annual statutory floor for illegal border crossings and permanently create an illegal immigration industry and ecosystem that endangers American citizens and rewards far-left activists with taxpayer-funded wealth. It will incentivize an unending flow of foreign nationals into the United States, create a permanent funding stream for violent international cartels, increase child trafficking operations worldwide, create an unending pressure point for future amnesty efforts, and cement federal approval for the continued disruption and upheaval of American communities to the exclusive benefit of non-citizens. The Senate bill is measurably worse than the existing paradigm.

Members of Congress must vociferously reject craven attempts to legalize illegal immigration, cynical provisions that endanger Americans, and nefarious policies that give legitimacy to both human trafficking and violent international cartels.

³⁸Debusmann, B. (June 4, 2024), "How Joe Biden and Donald Trump's border policies compare," *BBC*.
<https://www.bbc.com/news/world-us-canada-65574725>

³⁹CRA Staff (June 11, 2024). "Primer: The Biden Administration's Border Rule is a Farce," *Center for Renewing America*.
<https://americarenewing.com/issues/primer-the-biden-administrations-border-rule-is-a-farce/>

⁴⁰Cuccinelli, K. and Turner, A. (March 25, 2024). "Policy Brief: The US Military May Be Used to Secure the Border," *Center for Renewing America*. <https://americarenewing.com/issues/policy-brief-the-u-s-military-may-be-used-to-secure-the-border/>