

HOUSE COMMITTEE ON FOREIGN AFFAIRS

**THE U.S. BORDER CRISIS AND THE AMERICAN
SOLUTION TO AN INTERNATIONAL PROBLEM**

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Chairman McCaul and Ranking Member Meeks:

Thank you for the opportunity to testify before the House Committee on Foreign Affairs about the ongoing humanitarian and security crisis at our southern border. As someone who previously led the Department of Homeland Security (DHS), I can say without any doubt or equivocation, the security and integrity of our southern border is the worst since 9/11 and it is the direct result of the intentional, yet ineffective border strategy of the Biden Administration.

It is no coincidence that the three fiscal years that correspond with the Biden Administration, Fiscal Years 2021-2023, are the three worst years of illegal alien border apprehensions ever recorded. It is easy to get lost in the numbers but for some perspective, consider that the Biden Administration is responsible for the 10 highest months of southern border apprehensions ever recorded. When you include the 240,988 illegal aliens “encountered” at the southern border in October 2023—the highest level ever recorded for that month—an astronomical 6.53 million illegal aliens have been encountered by U.S. Customs and Border Protection personnel along the southern border in the last 33 months.¹

But the full extent of the border crisis now extends beyond the southern border. Under the guise of “safe, lawful pathways,” DHS is unlawfully running multiple categorical parole schemes that allow tens of thousands of inadmissible aliens into the U.S. every month that are not captured in the southwest border encounters data set. Section 212(d)(5) of the INA could not be clearer that the right to grant this kind of parole comes from a remarkably narrow sliver of statutory authority, only allowable on a case-by-case basis for: (1) urgent humanitarian reasons or (2) significant public benefit.² DHS has ignored the statutory requirements and turned this limited authority into an override of the legal immigration system.

Taking into account these unlawful parole schemes, there have actually been 7.86 million nationwide encounters of illegal aliens during the Biden Administration.³ Add the estimated 1.8 million known “gotaways” who bypassed Border Patrol agents, and you realize that approximately 9.6 million illegal aliens have entered the U.S. during the current administration—a population that would make it the 11th largest state.

¹ <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

² 8 U.S.C. 1182(d)(5).

³ <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

Clearly, today's border security system is unrecognizable from the successful America First border security policies of the Trump Administration or even the border security apparatus in place during the administrations of Presidents Clinton, Bush, and Obama. In all candor, the Biden Administration is the first administration of either political party to actively take steps to diminish the security along our southern border.

One of the most successful Trump Administration border policies that helped establish the most secure border in my lifetime was the Migrant Protection Protocols (MPP) or the "Remain in Mexico" policy. Back in 2018-2019, we were confronted with caravans of illegal aliens surging to the southern border and making fraudulent asylum claims in order to block being swiftly returned to their home countries under the expedited removal authority.

Section 235(b)(1)(B)(iii)(IV) of the INA is clear that aliens who make a credible fear claim at the border are subject to mandatory detention. While the Trump Administration maximized its detention beds, we lacked the capacity to detain everyone. At the peak of this crisis in May 2019, there was an average of 4,800 illegal aliens per day crossing the southern border.⁴ By comparison, throughout the Biden Administration, DHS has consistently averaged between 8,000-14,000 illegal alien apprehensions per day.

Due to several misguided court rulings, by mid-2018 the cartels, human traffickers, and smugglers figured out that aliens posing as family units were highly likely to be released into the U.S. because of judicial limitations imposed on family detention. Almost immediately, family units, including some fake families, mostly from the Northern Triangle, started arriving at the southern border to claim asylum. However, only between 10-15% of illegal aliens apprehended at the southern border who claim asylum actually qualify for this humanitarian relief.⁵ The rest, to put it mildly, are trying to game the system. Under the Immigration and Nationality Act (INA), they need to—but they cannot—satisfy the appropriately rigorous "well-founded fear of persecution" standard in order to obtain humanitarian relief.⁶ What illegal aliens had historically found is that DHS was releasing them into the American communities of their choice with a court date before an immigration judge several years down the road. We were determined to put an end to that destructive policy.

⁴ See

https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

⁵ See DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim, *available at*

<https://www.justice.gov/eoir/page/file/1062976/download>.

⁶ 8 U.S.C. 1101(A)(42).

Undeterred by the detention space limitations and unwilling to perpetuate catch and release, DHS worked in tandem with the Departments of Justice and State, and the White House to find creative solutions that were grounded in the rule of law. What we found was a previously untapped legal authority in section 235(b)(2)(C) of the Immigration and Nationality Act (INA) that allows the U.S. to require illegal aliens who make asylum claims at the border to wait in a contiguous country during the pendency of their immigration court hearings.⁷ And, unlike the "safe third country" authority found at section 208(a)(2)(A) of the INA, what became known as MPP did not require a formal bilateral or multilateral agreement.⁸

It wasn't easy, but with President Trump's leadership, the Mexican government worked with us to get the MPP policy started in January 2019 at three locations along the border. In close coordination and negotiation with the Government of Mexico, we were able to expand MPP to the fullest extent authorized under the law later that year.⁹

The goal of MPP was simple – quickly provide asylum protections to those who truly qualify for it while rooting out the fraud that has historically plagued the asylum system.

Here's how we achieved that outcome. Under MPP, certain non-Mexican nationals who were inadmissible to the U.S. were returned to Mexico for the duration of their immigration proceedings. The immigration court hearings for aliens enrolled in MPP were prioritized, similar to how the Department of Justice treated aliens who were detained in U.S. Immigration and Customs Enforcement custody. The entire process was completed in a matter of months—far less time than illegal aliens are currently waiting in Northern Mexico to benefit from the unlawful CBP One app parole scheme.

The results speak for itself. When DHS assessed the effectiveness of MPP at the end of October 2019, we found that in the first 10 months of the policy more than 55,000 aliens to Mexico under MPP.¹⁰ Apprehensions peaked in May 2019 at 144,116, a level that is lower than every month under the Biden Administration except for February 2021.¹¹ But as we continued to improve our implementation of MPP, apprehensions had decreased by 64% by September 2019 to end that fiscal year. The numbers remained low to start Fiscal Year

⁷ 8 U.S.C. 1225(b)(2)(C).

⁸ 8 U.S.C. 1158(a)(2)(A).

⁹ https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

¹⁰ https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

¹¹ <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019>.

2020 until MPP was largely superseded by Title 42 in the effort to stop the introduction of COVID-19 through the southern border.

Importantly, over the course of MPP border encounters with Central American families, who were the main driver of the crisis and comprised a majority of MPP-amenable aliens, decreased by approximately 80% since the implementation of MPP.¹²

Put another way, during the Trump Administration: fraudulent asylum claims declined, those who qualified got humanitarian relief faster¹³, and lives were saved as migrants stopped taking the dangerous journey north when they realized they would not be allowed into American communities.

In stark contrast, today we see a border in chaos and crisis because the Biden Administration ideologically and arbitrarily dismantled all of the successful border policies it inherited and sidelined career Border Patrol experts who continued to warn that a historic surge of illegal aliens would overwhelm the border in the absence of any deterrent policies. Political correctness and rank ideology supplanted common sense and the clear command of our immigration laws.

This administration consistently casts blame on Congress for the crisis by pointing out that major U.S. immigration law has not changed since the mid-1990s. They are correct about that- the laws didn't change between administrations, just the refusal of the current one to follow their legal obligations. The Biden Administration has embraced ineffective and unlawful policies that have made American communities less safe and enriched the Mexican cartels to new heights because open borders are a lucrative business.

As I have previously testified, the Biden Administration has failed in its constitutional duty to secure the border and enforce U.S. immigration laws. DHS has all of the legal authority and resources it needs to secure the border. Simply throwing more funding at this problem will not solve it. There is a policy problem along the southern border, not a resource problem. Additional taxpayer dollars will continue to be used to streamline the processing of illegal aliens out of DHS custody and into American communities.

In conclusion, I would suggest that one of the most important duties as the DHS Secretary is to be transparent and honest with the American people

¹² https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

¹³ https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

about security issues affecting the homeland. This administration and this Secretary have failed at that duty. Time and again, they have failed to be honest with the American people about the severity of the problem, while at the same time absurdly attempting to lay blame on the Trump Administration, on Congress, or some other entity for their failed strategy.

MPP is a proven, successful, and legal program to secure the border. The refusal to immediately reinstate this policy is a blatant dereliction of duty.

Thank you and I look forward to answering your questions.