

“Consequences of Failure: How Biden’s Policies Fueled the Border Crisis”

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When trying to solve a historic problem like the intentional mass illegal migration this country experienced the past four years, it is important to ask the question, “How did we get here?”—not just to fix the problem, but also to avoid repeating it in the future.

The decision to open the border was a policy choice made by Joe Biden’s presidential campaign. The American public saw glimpses of his future policies in late 2019 and 2020. During a presidential primary campaign debate in 2019, Joe Biden said he would “make sure...we immediately surge to the border all those people that are seeking asylum. They deserve to be heard. That’s who we are. We’re a nation that says if you want to flee and you’re fleeing oppression, you should come.”¹ In January 2020, Biden tweeted that he would end the Remain in Mexico program on day one.² In an August 2020 media interview, Biden said, “There will not be another foot of wall constructed [by] my administration.”³

Then, once Biden was sworn in as President, he wasted no time unleashing his open border agenda. On the first day of his Administration, Biden began halting effective immigration enforcement and anti-fraud measures. His orders included stopping construction of the border wall system, ending

¹Karl Salzmann, “Flashback: Biden Tells Migrants to ‘Surge to the Border,’” *Washington Free Beacon*, May 10, 2023, <https://freebeacon.com/biden-administration/flashback-biden-tells-migrants-to-surge-to-the-border/> (accessed March 16, 2025).

²Joe Biden, X, Jan. 29, 2020, https://x.com/JoeBiden/status/1222691999364657152?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1222691999364657152%7Ctwgr%5E%7Ctwcon%5Esl_&ref_url=https%3A%2F%2Fwww.washingtonpost.com%2Fnational%2Fbiden-immigration-policy-changes%2F2020%2F12%2F22%2F2eb9ef92-4400-11eb-8deb-b948d0931c16_story.html (accessed March 21, 2025).

³Barbara Sprunt, “Biden Would End Border Wall Construction, But Wouldn’t Tear Down Trump’s Additions,” NPR, August 5, 2020, <https://www.npr.org/2020/08/05/899266045/biden-would-end-border-wall-construction-but-wont-tear-down-trump-s-additions> (accessed March 16, 2025).

enrollments of aliens in the effective anti-asylum fraud Remain in Mexico program, ordering that no deportations would occur for the first 100 days of his Administration, and revoking President Trump’s executive order and presidential memorandum ordering the collection of citizenship information during the decennial Census and exclusion of illegal aliens from the Census apportionment of Members of the U.S. House of Representatives.⁴

Biden directed federal agencies to refer to legal and illegal aliens alike as “noncitizens,” thereby ignoring statutory language to erase the line between legal and illegal immigration.⁵

His political appointees implemented policies to instruct U.S. Customs and Border Protection (CBP) agents to process most inadmissible aliens they encountered into the U.S. in violation of the immigration statute instead of returning them across the border.⁶

The Left and the media referred to all encountered illegal aliens as “asylum seekers” in an attempt to generate American empathy for the masses who were coming to the U.S. Meanwhile, the real consequence of this propaganda was to encourage inadmissible aliens to file fraudulent asylum applications to buy themselves more time to remain in the U.S. and gain work authorization.

Using a 2021 policy memorandum, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas restricted U.S. Immigration and Customs Enforcement’s (ICE’s) ability to execute most of its immigration enforcement functions, limiting investigations, arrests, detentions, prosecutions, and deportations to spies, terrorists, some aggravated felons, and aliens who illegally crossed the border after November 1, 2020.⁷

Yet, as the data shows, the Biden Administration did not operate even according to those very limited enforcement priorities. Echoing Barack Obama’s 2008 campaign statement that “we are five days away from fundamentally transforming the United States of America,” Mayorkas bragged in January 2022 that “we have fundamentally changed immigration enforcement. For the first time ever, our policy explicitly states that a non-citizen’s unlawful presence in the United States will not,

⁴National Immigration Law Center, “Biden Administration Day One Immigration Actions,” January 28, 2021, <https://www.nilc.org/resources/biden-administration-day-one-immigration-actions/> (accessed March 18, 2025); President Joseph R. Biden Jr., Executive Order 13986, “Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census,” January 20, 2021, *Federal Register*, Vol. 86, No. 14 (January 25, 2021), pp.7015–7017, <https://www.federalregister.gov/documents/2021/01/25/2021-01755/ensuring-a-lawful-and-accurate-enumeration-and-apportionment-pursuant-to-the-decennial-census> (accessed March 18, 2025).

⁵Memorandum from Troy A. Miller, Senior Official Performing the Duties of the Commissioner, U.S. Customs and Border Protection, to Deputy Commissioner et al., “Subject: Updated Terminology for CBP Communications and Materials,” April 19, 2021, <https://lawprofessors.typepad.com/files/4-19-21-cbp-memo.pdf> (accessed March 18, 2025).

⁶Adam Shaw, Bill Melugin, and Griff Jenkins, “Mayorkas Tells Border Patrol Agents That ‘Above 85%’ of Illegal Immigrants Released into US: Sources,” Fox News, January 8, 2024, <https://www.foxnews.com/politics/mayorkas-tells-border-patrol-agents-illegal-immigrants-released-into-us-sources> (accessed March 19, 2025).

⁷Memorandum from Alejandro N. Mayorkas, Secretary, U.S. Department of Homeland Security, to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement; Troy Miller, Acting Commissioner, U.S. Customs and Border Protection; Ur Jaddou, Director, U.S. Citizenship and Immigration Services; Robert Silvers, Under Secretary, Office of Strategy, Policy, and Plans; Katherine Culliton-González, Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties; and Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, “Subject: Guidelines for the Enforcement of Civil Immigration Law,” September 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf> (accessed March 19, 2025).

by itself, be a basis for the initiation of an enforcement action.” He called this “a profound shift away from the prior administration’s indiscriminate enforcement.”⁸ In reality, Mayorkas’s policies were clear violations of federal law.

Violated Immigration Parole

In addition to opening the border and ignoring immigration enforcement statutes, Mayorkas violated immigration benefit statutes passed by Congress in the Immigration and Nationality Act (INA). The most blatant of these violations was his use of immigration parole. The INA states that:

[T]he [Secretary of Homeland Security] may...in his discretion parole into the United States temporarily...only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the [Secretary], have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.⁹

Congress later added the following statutory language to prevent the abuse of parole to bring refugees into the U.S. more quickly:

The [Secretary] may not parole into the United States an alien who is a refugee unless the [Secretary] determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 1157 of this title.¹⁰

Congress intended that parole would be used very rarely in special circumstances when an alien does not have adequate time to use legal visa or refugee processes—for example, when coming to the U.S. for emergency surgery or to testify in a criminal case. Therefore, Congress logically did not provide work authorization for aliens who receive temporary parole.

Despite this clear statutory text, Mayorkas repeatedly used mass and categorical parole to allow tens of thousands of inadmissible aliens to bypass our lawful visa and refugee processes each month. He created parole programs for aliens from Afghanistan, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Ukraine, and Venezuela, as well as aliens who have

⁸Adam Shaw, “Biden’s First Year: Mayorkas Says Admin Has ‘Fundamentally Changed’ Interior Immigration Enforcement,” Fox News, January 20, 2022, <https://www.foxnews.com/politics/bidens-first-year-mayorkas-admin-fundamentally-changed-interior-immigration-enforcement> (accessed March 19, 2025).

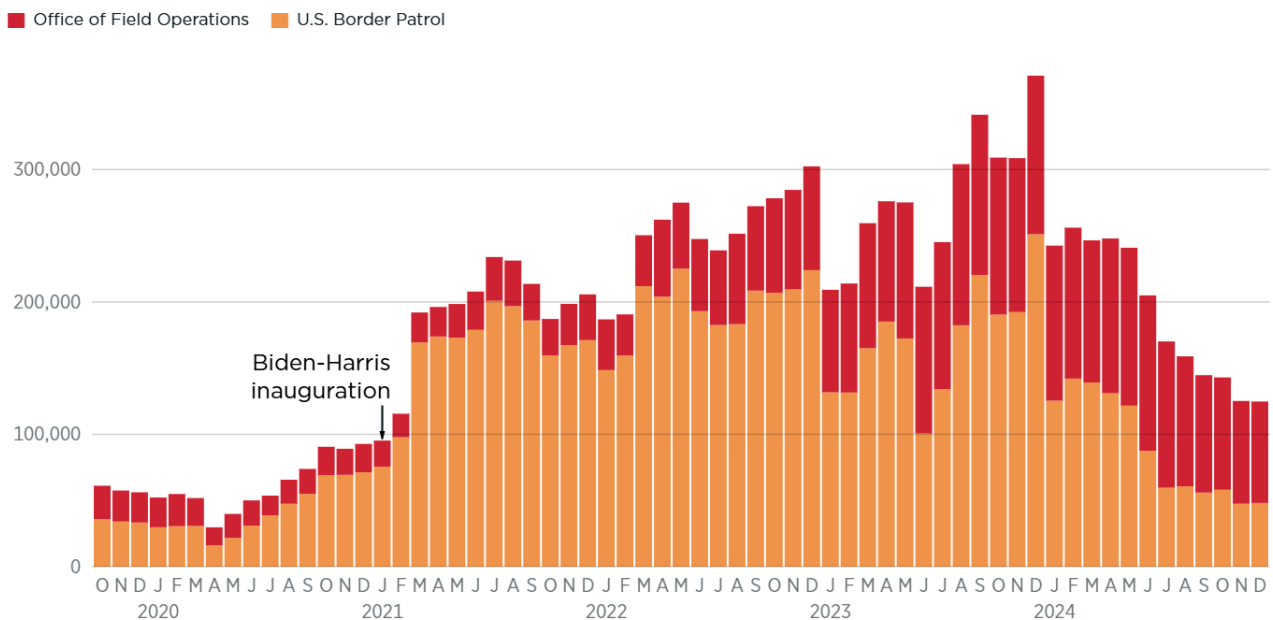
⁹8 U.S. Code § 1182(d)(5)(A), <https://www.law.cornell.edu/uscode/text/8/1182> (accessed March 19, 2025).

¹⁰8 U.S. Code § 1182(d)(5)(B), <https://www.law.cornell.edu/uscode/text/8/1182> (accessed March 19, 2025).

previously been deported¹¹ and aliens who have resided in the U.S. illegally for at least 10 years and are married to U.S. citizens.¹²

In addition, Mayorkas created a parole program under which any alien could use the CBP Mobile One application to make an appointment at a land or air port of entry where CBP paroled them into the U.S.¹³ In other words, instead of securing the border, the Biden Administration created a deceptive shell game by shifting the illegal flow to the ports (red segments in chart below) while pointing at (briefly) falling numbers of aliens crossing the southern border between these ports of entry (orange segments in chart below).

Monthly Unlawful Entry Encounters



Secretary Mayorkas also gave his mass parolees renewable work authorization without congressional authorization. He propagandized his bypass of the statutory visa and refugee processes as “expanding lawful pathways” and insisted that parole was granted on a “case-by-case basis.” Federal judges, however, have found otherwise. For example, the Fifth Circuit Court of Appeals rebuked DHS’s abuse of parole in its December 2021 decision regarding the Secretary’s termination

¹¹U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States,” last reviewed/updated August 19, 2024, https://www.uscis.gov/humanitarian/humanitarian_parole (accessed March 19, 2025).

¹²U.S. Department of Homeland Security, “Implementation of Keeping Families Together,” Notice of Implementation of the Keeping Families Together Process,” *Federal Register*, Vol. 89, No. 161 (August 20, 2024), pp. 67459–67490, <https://www.govinfo.gov/content/pkg/FR-2024-08-20/pdf/2024-18725.pdf> (accessed March 19, 2025).

¹³News release, “DHS Scheduling System for Safe, Orderly and Humane Border Processing Goes Live on CBP One™ App,” U.S. Department of Homeland Security, January 12, 2023, <https://www.dhs.gov/archive/news/2023/01/12/dhs-scheduling-system-safe-orderly-and-humane-border-processing-goes-live-cbp-onetm> (accessed March 19, 2025).

of the Migrant Protection Protocols. The court held that “[d]eciding to parole aliens *en masse* is the opposite of *case-by-case* decision-making,” and added that “DHS’s pretended power to parole aliens while ignoring the limitations Congress imposed on the parole power...[is] not *nonenforcement*; it’s *misenforcement*, suspension of the INA, or both.”¹⁴

Rendered Asylum Meaningless

The Biden Administration grossly abused America’s second most important immigration benefit after U.S. citizenship— asylum. Beyond telling aliens to surge our border and claim asylum, as Biden did during his 2020 primary debate, and de facto support from the media, which refer to all illegal aliens as “asylum seekers,” Mayorkas violated immigration statutes to facilitate asylum fraud both procedurally and substantively.

He violated Congress’s establishment of jurisdiction over asylum applications by replacing immigration judges, ICE attorneys, and the adversarial process with U.S. Citizenship and Immigration Service (USCIS) asylum officers who processed both initial claims and second-stage applications for border crossers. Without cross-examination by ICE attorneys and immigration judges, USCIS asylum officers were more likely to rubber-stamp and grant weak, questionable, and unverified asylum claims.¹⁵

Substantively, the Administration supported claims of domestic violence, gang activity, general crime, and climate change as grounds for asylum. These claims do not meet the requirements of the law, which are based on persecution because of an alien’s race, religion, nationality, political opinion, or membership in a particular social group. We now find ourselves far afield from the refugee protection the U.S. committed to provide after World War II. The benefit of asylum has been watered down and abused to be just another way to bring more aliens into the U.S. and allow them to remain here.¹⁶

Encouraged Unaccompanied Children Border Crossings

Secretary Mayorkas repeatedly stated publicly that he would not turn unaccompanied children back from the border. This served as an advertisement for cartels to smuggle children into the U.S. During

¹⁴*Texas v. Biden*, No. 21–10806 (5th Cir. 2021) (emphasis in original).

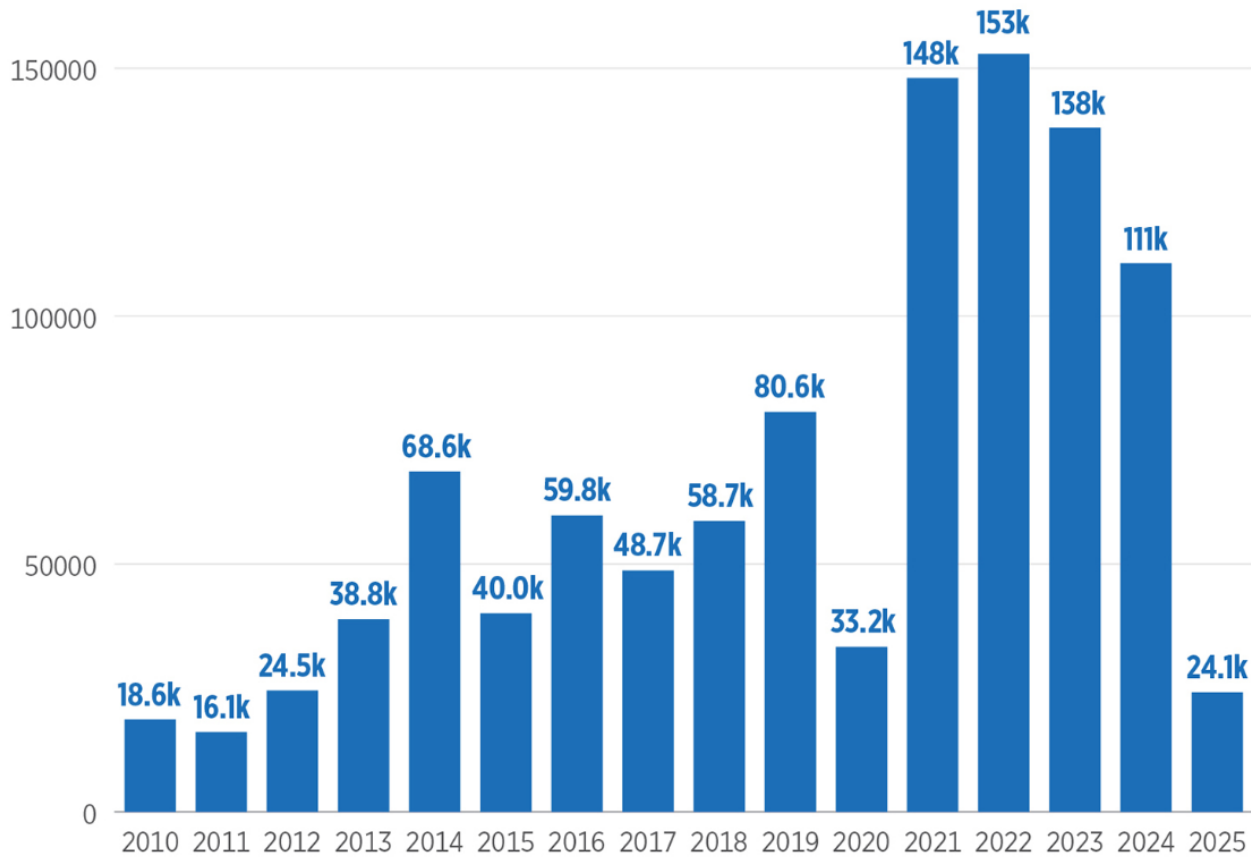
¹⁵USCIS asylum grants have been significantly higher than application denials. As of September 2024, USCIS had denied 4,600 asylum cases and granted 16,932 applications in FY 2024. Table, “Number of Form I-589, Application for Asylum and for Withholding of Removal by Quarter, Form Status, and Processing Time (July 1, 2024–September 30, 2024),” in U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “Immigration and Citizenship Data: All USCIS Application and Petition Form Types (Fiscal Year 2024, Quarter 4),” December 18, 2024, <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed March 19, 2025).

¹⁶Tibisay Zea, “How the Asylum System Became the Main Avenue for Mass Migration to the US,” *The World*, February 12, 2024, <https://theworld.org/stories/2024/02/12/how-asylum-system-became-main-avenue-mass-migration-us> (accessed March 19, 2025).

the Biden Administration, the CBP encountered over 550,000 unaccompanied children, a historic and terrible record.¹⁷

Unaccompanied Alien Children

TOTAL APPREHENSIONS OF UNACCOMPANIED ALIEN CHILDREN AGES 0-17, BY FISCAL YEAR



SOURCES: U.S. Customs and Border Protection, and Heritage Foundation research.

 heritage.org

The results were gut-wrenching as seen in videos and photos of children left at the river’s edge, dropped over the border wall, or abandoned. The Biden Administration stopped DNA testing of suspected smugglers posing as families with children at the border. Border agents saw children that appeared to be drugged asleep so they could not respond to border agents’ questions about the adults accompanying them.

¹⁷Table, “FY Comparison by Demographic,” in U.S. Department of Homeland Security, U.S. Customs and Border Protection, “Nationwide Encounters,” last modified March 13, 2025, <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (accessed March 19, 2025).

Their misery did not end once the children entered the U.S. Unable to find and vet enough sponsors to take in the children, the Department of Health and Human Services (HHS) turned children over to unknown and unvetted adults, subjecting the children to potential sex trafficking and child labor. HHS later reported losing contact with at least 300,000 of the children.¹⁸

Relied on NGOs and Their Infrastructure

The Biden Administration paid tens of billions of dollars to NGOs to build an infrastructure from Panama north towards our southern border and throughout the U.S. to facilitate mass illegal immigration. The taxpayer money went to NGOs through many accounts and several departments: DHS, HHS, the State Department, USAID, the Justice Department, and more. In addition, the Biden Administration paid sanctuary jurisdictions to provide illegal aliens shelter, health care, documentation, and legal services, among other services.

Due to these open border policies and operations, the backlogs at both the Justice Department and DHS increased significantly. The number of cases in the Justice Department immigration courts backlog tripled from 1.2 million when Biden came into office to more than 3.7 million as of October 2024.¹⁹ The number of immigration benefit applications pending at DHS’s USCIS grew from over 6.3 million cases²⁰ when Biden became President to over 9.4 million through September 2024.²¹

The results of the Biden Administration’s open border operations were record-setting and devastating to America’s sovereignty, security, public safety, and economy. That is why it was the number one issue for so many Americans last November. With a new Administration, we are already seeing what securing the border does to the number of CBP encounters, but it will take years and significant resources for interior enforcement to get our immigration system to be lawful, orderly, and manageable.

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¹⁸U.S. Department of Homeland Security, Office of Inspector General, “Management Alert—ICE Cannot Monitor All Unaccompanied Migrant Children Released from DHS and U.S. Department of Health and Human Services’ Custody,” Final Management Alert OIG-24-46, August 19, 2024, p. 1, <https://www.oig.dhs.gov/sites/default/files/assets/2024-08/OIG-24-46-Aug24.pdf> (accessed March 19, 2025).

¹⁹Transactional Records Access Clearinghouse, “Immigration Court Backlog: Historical Backlog (from 1998),” <https://tracreports.org/phptools/immigration/backlog/> (accessed March 19, 2025).

²⁰Table, “Number of Service-wide Forms by Quarter, Form Status, and Processing Time, Fiscal Year 2021, Quarter 1,” U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2021Q1.pdf (accessed March 19, 2025).

²¹Table, “Number of Service-wide Forms by Quarter, Form Status, and Processing Time, July 1, 2024–September 30, 2024,” in U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “Immigration and Citizenship Data: All USCIS Application and Petition Form Types (Fiscal Year 2024, Quarter 4),” December 18, 2024, <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed March 19, 2025).

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