

**Written Testimony of Gene P. Hamilton**  
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**Submitted to the House Committee on the Judiciary**  
**Subcommittee on Immigration Integrity, Security, and Enforcement**  
**“Presidential Power to Secure the Border”**  
**March 7, 2024**

Thank you, Chairman McClintock, Ranking Member Jayapal, and all Members of the Subcommittee for having this critical hearing.

Congress has provided the President and the Executive Branch with significant, powerful tools that—if used and used effectively—can reduce illegal immigration to a trickle at the border. There are indeed some problems with some portions of the existing legal regime that Congress has provided and some problematic court decisions that *frustrate* the Department of Homeland Security’s ability to enforce the law, particularly with respect to certain demographic groups of aliens. But those flaws with the enforcement regime have little to do with the unprecedented crisis we see at the southern border today.

The situation we see—the chaos, the crime, the overwhelmed cities and states, the very fabric of our nation being torn apart—is the result of deliberate, intentional policy decisions made throughout the Biden Administration since January 20, 2021. Ultimately, President Biden himself bears responsibility for the situation today.

For reasons we can all speculate upon, the Biden Administration has abandoned any modicum of reason, common sense, and fidelity to the law when it comes to our immigration system. They have instead elected to end effective enforcement policies employed by prior administrations of both political parties and, in their place, knowingly adopt policies that facilitate the entry of millions of illegal aliens into the United States.

No society can thrive, much less sustain itself, under the pressures and damage caused by these decisions.

As I have testified before, we must—as a country defined by its commitment to the rule of law and in light of our exceptional position in recorded human history—acknowledge the following fundamental principles. They are principles the American people understand. They are principles the Trump Administration understood. They are principles that most in Congress once embraced, as reflected in the laws they passed.

- Every country has the sovereign right and responsibility to control its borders, and the United States is no different.
- The United States is the greatest country in the world and hundreds of millions—if not billions—of people worldwide would come here if they could. We cannot accommodate even a fraction of everyone who wants to come here.
- Most illegal aliens are not “asylum seekers.”
- Deporting illegal aliens from the United States advances our national sovereignty and is an essential component of our immigration system. Further, doing so accords due respect for those individuals who obey our laws and come through established visa programs.
- For those individuals who do not intend to use our visa system but want to come to the United States anyway, only one thing matters: getting into the interior of the United States.
- Releasing illegal aliens into the interior of the United States results in more illegal aliens attempting to come to the United States.

Those fundamental principles are the antithesis of the fundamental tenets of the Biden Administration’s principles when it comes to immigration and border security, which I can best summarize from observation as follows:

- Anyone who wants to come to the United States should be able to do so, regardless of merit or adherence to our laws or ideals, especially if they have a family member or friend already here.
- The United States is the only place in the world where people can be free from generalized crime and persecution.
- It is better for humanity for the citizens of all countries—particularly in the Western hemisphere—to come to do manual labor and similar jobs in the United States than for those same individuals to build up their own countries.
- The United States can adequately screen and vet the hundreds of thousands of illegal aliens coming across the border every month for crime and national security risks or anti-American ideology.
- Deporting illegal aliens is cruel and should never be done except in the most extreme circumstances.

These principles have led to disastrous consequences for our immigration system. The Biden Administration’s publicly available data demonstrate:

- **Southwest border encounters are at record highs.** Monthly encounters with illegal aliens at the southwest border have not dropped below 100,000 since the Biden Administration’s first full month in office and have risen to as

high as 301,983 in December 2023.<sup>1</sup> There were 1,734,686 encounters in FY2021, 2,378,944 in FY2022, 2,475,669 in FY2023, and already 961,537 in the first four months of FY2024.<sup>2</sup>

- In total, since February 2021, there have been more than 7.2 million encounters at the southwest border.<sup>3</sup>
- **The overwhelming majority of illegal aliens encountered at the southwest border are released into the interior of the United States.** Rather than detaining and deporting illegal aliens or using lawful processes like the Migrant Protection Protocols (MPP),<sup>4</sup> the Biden Administration is releasing the overwhelming majority of the illegal aliens it encounters at the southwest border into the interior of the United States. Indeed, a recent report from this Committee determined that as of March 2023, there were at least 2,464,424 illegal aliens that the Biden Administration released still in the United States.<sup>5</sup>
  - As an example, in December 2023 when there were 301,983 total encounters at the southwest border, CBP released at least 237,896 illegal aliens into the United States.<sup>6</sup>
- **Nationwide encounters are at record highs.** The statistics above only tell part of the story, as the Biden Administration’s decimation of our borders also includes the northern border and our interior ports of entry.<sup>7</sup> Total nationwide encounters have increased from 1,956,519 in FY2021, to 2,766,582 in FY2022, to 3,201,144 in FY2023, and already 1,231,213 in the first four months of FY2024.<sup>8</sup>
  - In total, there have been roughly 8.78 million nationwide encounters since February of 2021.<sup>9</sup>

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<sup>1</sup> *Southwest Land Border Encounters*, U.S. CUSTOMS AND BORDER PROT., <https://tinyurl.com/4u3cfprm> (last modified Feb. 5, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 8 U.S.C. § 1225(b)(2)(C).

<sup>5</sup> STAFF OF H. COMM. ON THE JUD., SUBCOMM. ON IMMIG. INTEGRITY, SEC., AND ENF’T, 118TH CONG., INTERIM STAFF REPORT: THE BIDEN BORDER CRISIS: NEW DATA AND TESTIMONY SHOW HOW THE BIDEN ADMIN. OPENED THE S. BORDER AND ABANDONED INTERIOR ENF’T (2023), [bit.ly/41ce3a9](https://bit.ly/41ce3a9) [hereinafter HOUSE JUDICIARY COMMITTEE INTERIM STAFF REPORT]; STAFF OF H. COMM. ON HOMELAND SEC., 118TH CONG., INTERIM STAFF REPORT, CAUSES, COSTS, AND CONSEQUENCES: WHY SEC. MAYORKAS MUST BE INVESTIGATED FOR HIS BORDER CRISIS 11, 13 (2023), <https://bit.ly/40V8qNa>.

<sup>6</sup> *Custody and Transfer Statistics*, U.S. CUSTOMS AND BORDER PROT., <https://tinyurl.com/5xjpu2hk>, (click “U.S. Border Patrol Dispositions and Transfers” and “Office of Field Operations – Dispositions and Transfers” to expand those sections) (last modified Feb. 14, 2024).

<sup>7</sup> *Nationwide Encounters*, U.S. CUSTOMS AND BORDER PROT., <https://tinyurl.com/28js28wp> (last modified Feb. 5, 2024).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

- Increased encounters at the northern border partially explain this total number, but most significantly, the number includes the Biden Administration’s abuse of the parole power in 8 U.S.C. § 1182(d)(5)(A) through programs like the so-called “Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,” which paroles approximately 30,000 aliens into the interior of the United States every month.<sup>10</sup>
- **Deportations are statistically non-existent.** At the same time that U.S. Customs and Border Protection (CBP) is releasing millions of illegal aliens into the United States, enforcement actions by U.S. Immigration and Customs Enforcement (ICE) are statistically non-existent. In short, there is no credible threat of deportation for the millions of aliens that the Biden Administration is releasing into the United States.
  - According to ICE’s FY2021 report, ICE removed a minuscule 59,011 aliens from the United States.<sup>11</sup>
  - In FY2022, ICE removed 72,177 aliens from the United States.<sup>12</sup>
  - In FY2023, ICE removed 142,580 aliens from the United States.<sup>13</sup>
- **The Biden Administration is adding millions of illegal aliens to the population already in the United States.**
  - As described above, according to this Committee’s report, of the more than 5 million illegal alien encounters since the start of the Biden Administration, 2,464,424 illegal aliens remained in the United States as of March 31, 2023.<sup>14</sup> As DHS provides additional information to this Committee as time goes on, that number will undoubtedly grow exponentially.

In my opinion, these numbers constitute an unconstitutional abdication of the Executive’s duty to “take care that the laws be faithfully executed”<sup>15</sup>—laws that Congress has passed and that previous Presidents signed.

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<sup>10</sup> *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://tinyurl.com/2bmk5br8> (last updated Sep. 20, 2023).

<sup>11</sup> U.S. IMMIGR. AND CUSTOMS ENF’T, ICE ANNUAL REPORT FISCAL YEAR 2021 (Mar. 11, 2022), <https://tinyurl.com/5739mvp7>.

<sup>12</sup> U.S. IMMIGR. AND CUSTOMS ENF’T, ICE ANNUAL REPORT FISCAL YEAR 2022 (Dec. 30, 2022), <https://tinyurl.com/53y83dsx>.

<sup>13</sup> U.S. IMMIGR. AND CUSTOMS ENF’T, ICE ANNUAL REPORT FISCAL YEAR 2023 (Dec. 29, 2023), <https://tinyurl.com/mw5ff822>.

<sup>14</sup> HOUSE JUDICIARY COMMITTEE INTERIM STAFF REPORT at 4.

<sup>15</sup> U.S. Const. art. II, § 3

The Biden Administration knows that using tools like MPP, Asylum Cooperative Agreements,<sup>16</sup> Expedited Removal,<sup>17</sup> visa sanctions on countries that refuse to take back their nationals,<sup>18</sup> detention of aliens apprehended at the border while they await the outcome of their immigration court proceedings,<sup>19</sup> and other effective uses of the tools that Congress has provided would end the crisis at the border relatively quickly. But the Biden Administration does not desire an end to this self-created crisis, as doing so would not only discredit the radical ideological worldview of some of its most committed political appointees and outside allies, but it would also prematurely end the pressure campaign it has been attempting to use to force this Congress to pass yet another amnesty—or to radically reshape our laws to cement their open-borders ideology for generations to come.

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<sup>16</sup> 8 U.S.C. § 1158(a)(2)(A).

<sup>17</sup> 8 U.S.C. § 1225(a)–(b).

<sup>18</sup> 8 U.S.C. § 1253(d).

<sup>19</sup> 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV).