



H.R. 2, THE SECURE THE BORDER ACT OF 2023

FACT CHECK: HOW H.R. 2 SECURES THE BORDER AND FIXES OUR BROKEN ASYLUM SYSTEM

The new Republican House majority is offering a serious legislative solution to solve the humanitarian and security crisis at the southern border that was created by the Biden Administration's failed policies. If enacted, **H.R. 2**, the Secure the Border Act of 2023, would help secure the border, discourage asylum fraud, end the Department of Homeland Security's (DHS) abuse of the parole authority, resume border wall system construction, and deter human trafficking.

Unfortunately, advocates of the status quo who oppose these America First policies are making false claims about the bill. It is time to set the record straight.

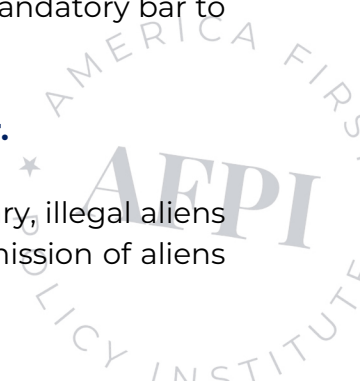
CLAIM: H.R. 2 abolishes/bans asylum claims by aliens.

X FALSE: The bill does not ban asylum claims. Instead, the bill gives the Department of Homeland Security (DHS) three options for how they handle **illegal aliens** apprehended at the border: (1) detain them while they are in expedited removal proceedings under Section 235 of the Immigration and Nationality Act (INA); (2) reimplement "Remain in Mexico" while they await an immigration court date for removal proceedings under INA 240; or (3) immediately expel the alien. **Illegal aliens placed in mandatory detention or "Remain in Mexico" are still allowed to make an asylum claim as a defense against removal.** This includes the ability for the alien to obtain legal counsel, but not at U.S. taxpayer expense. The alien is also afforded the opportunity to make a claim before an immigration judge or a USCIS asylum officer, depending on how DHS processes the credible fear screening. Additionally, any alien already in the country—whether lawfully or unlawfully—is still able to make an asylum claim with U.S. Citizenship and Immigration Services. **H.R. 2 makes no changes to the "affirmative" asylum process for aliens already in the U.S., regardless of their legal status.**

Additionally, the U.S. is not required to grant asylum to all aliens who may qualify for humanitarian relief. Instead, under the INA, asylum is discretionary relief. This means an otherwise approvable claim could be denied, including in cases in which a mandatory bar to relief applies.

CLAIM: Illegal aliens have a "right" to claim asylum at the southern border.

X FALSE: Despite inaccurate media reporting and statements to the contrary, illegal aliens have no "right" to claim asylum in the U.S. The INA sets the rules for the admission of aliens



into the U.S. An alien who arrives at the border—including a port of entry—without a visa or other valid entry document is inadmissible under INA 212(a)(7). Any alien who crosses the border illegally is inadmissible under INA 212(a)(6). Additionally, any alien who was previously removed from the country is inadmissible for five years under INA 212(a)(9). **All of these aliens are removable from the U.S.**, but they may raise an asylum claim as a defense to stop the deportation. Only aliens who meet the INA definition of “refugee” qualify for asylum and are allowed to remain in the country.

Nearly all illegal aliens showing up at the southern border are coming to escape economic hardship, poverty, gang violence, domestic violence, or general fear of criminal conduct. These are not grounds for asylum under the law. As a result, **only 10–15%** of the illegal aliens who claim asylum at the southern border qualify for humanitarian relief, and **40%** fail to even file an asylum claim once released into American communities.

CLAIM: Turning away illegal aliens at the border violates international humanitarian obligations.

X FALSE: The new discretionary authority to immediately turn away aliens at the border does not violate international humanitarian obligations. Neither the 1951 U.N. Convention nor the 1967 Refugee Protocol is directly enforceable in U.S. law, but some of their obligations have been implemented through new laws and regulations. In April 2018 guidance, the United Nations High Commissioner for Refugees affirmed that “refugees do not have an unfettered right to choose their ‘asylum country.’”

CLAIM: Migrants can choose which country to seek asylum in.

X FALSE: Migrants fleeing persecution should seek asylum or similar humanitarian relief from the first country they reach with a functioning asylum system. For the better part of the last decade, as “credible fear” claims significantly increased, nearly all of the aliens apprehended at the southern border crossed through at least one other country where they could have sought humanitarian relief, including Mexico. H.R. 2 ends this asylum “forum shopping” by aliens who are choosing to come to the U.S. for economic and family reunification reasons by making them ineligible for asylum in the U.S. if they did not seek asylum in any of the countries they transited to get to the southern border.

CLAIM: H.R. 2 harms border communities.

X FALSE: H.R. 2 helps border communities because the policies included in this bill secure the border, eliminate asylum fraud, and prevent illegal aliens from being released into border communities. Loopholes in the law combined with the Biden Administration’s non-enforcement of policies have fueled the worst humanitarian and security crisis in our Nation’s



history, with border communities bearing the brunt of it. H.R. 2 closes these loopholes, including raising the “credible fear” standard and mandates that aliens are detained or wait in Mexico until any asylum claims are heard.

CLAIM: Border security means sending additional resources and personnel to the southern border.

X FALSE: Our Nation does not have a funding problem at the southern border, but instead a policy problem. No amount of money or personnel will secure the border if they are continued to be used to process illegal aliens out of DHS custody and into American communities. The Biden Administration’s recent announcement to send 1,500 National Guard to the border is insufficient because they are statutorily prohibited from conducting law enforcement activities. Surging personnel to the border will only be effective if new deterrent policies are put in place. H.R. 2 provides for the hiring of additional Border Patrol agents but prevents them from being diverted to non-enforcement responsibilities that are currently occurring. To date, the Biden Administration has failed to offer a new strategy, but the additional agents authorized under H.R. 2 can only participate in actions to secure the border and cannot be involved in non-enforcement activities.

CLAIM: H.R. 2 harms migrant children.

X FALSE: Loopholes in current law prevent DHS from quickly returning unaccompanied alien children (UACs) who are non-Mexican and non-Canadian. This has fueled a UAC trafficking crisis that has reached unprecedented heights under the failed policies of the Biden Administration. H.R. 2 closes these loopholes and protects vulnerable UACs from traffickers and cartels by quickly reuniting them with their families back in their home countries.

CLAIM: Categorical parole programs are “new, safe legal pathways” to come to the U.S.

X FALSE: The categorical use of parole is an unlawful use of this narrow authority. Immigration parole is limited to a case-by-case basis and only for either “urgent humanitarian reasons” or “significant public benefit.” DHS has abused this authority by creating nationality-based categorical parole programs for aliens who are inadmissible or otherwise do not qualify for a visa. DHS is using parole to hide the extent of the border crisis from the American people because these illegal aliens do not show up in the monthly border apprehension numbers. H.R. 2 reins in this abuse and restores parole to its original intended function.

