



TESTIMONY | Center for Homeland Security & Immigration

THE IMPACT OF BIDEN'S OPEN BORDER ON THE AMERICAN WORKFORCE

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WRITTEN TESTIMONY OF ROBERT LAW

On September 13, 2023, Robert Law, AFPI's Director of the Center for Homeland Security & Immigration, testified before the House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions. The hearing was titled, *The Impact of Biden's Open Border on the American Workforce*, and can be viewed [here](#). Below is the written testimony that was submitted for the Congressional record:

Chairman Good and Ranking Member DeSaulnier:

Thank you for the opportunity to testify before the House Committee on Education and the Workforce's Subcommittee on Health, Employment, Labor, and Pensions.

Since taking office, the Biden Administration has systemically and purposefully dismantled the securest border in our Nation's history. In just 30 months, over six million illegal aliens have been apprehended crossing the southern border, with more than half of them being released into American communities.¹ Additionally, an estimated two million known "gotaways" bypassed Border Patrol agents and made it into the country.² Countless more have entered the United States undetected because our Border Patrol agents are busy processing the unprecedented number of women and children illegally entering our country.

The full extent of the problem is not limited to the southern border because the Biden Administration is now unlawfully using the parole authority from section 212(d)(5) of the Immigration and Nationality Act (INA) to categorically allow tens of thousands of inadmissible aliens to be flown into American communities every month under the guise that this policy is a "lawful pathway."³ As a result of this failed border strategy:

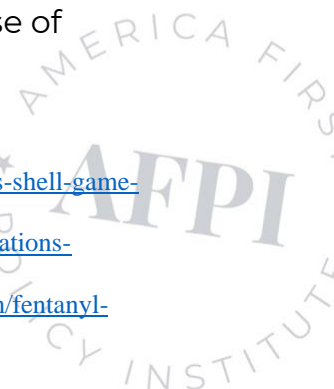
- migrant children are being trafficked at record levels;
- fentanyl is pouring over the border and is now the leading cause of death of young Americans, aged 18-45;⁴ and

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

² See <https://homeland.house.gov/2023/06/22/factsheet-post-title-42-border-numbers-confirm-mayorkas-shell-game-unprecedented-national-security-crisis/>.

³ See e.g., <https://www.dhs.gov/news/2023/06/06/border-encounters-remain-low-biden-harris-administrations-comprehensive-plan-manage>.

⁴ See <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates>; <https://www.gbhoh.com/fentanyl-becomes-leading-cause-of-death-for-ages-18-45/>;



- millions of illegal aliens are now in the workforce taking American jobs.

To be clear, this is a crisis by design.

The Biden Administration inherited the most secure border in our Nation's history thanks to the America First policies put in place by the Trump Administration. But beginning on January 20, 2021, the Biden Administration immediately began dismantling all of these successful border security policies. The Department of Homeland Security (DHS) stopped building the sophisticated border wall system despite much of the materials already bought and paid for by American taxpayers being on site.⁵ Over the objections of career DHS agents and officers, they ended the revolutionary Migrant Protection Protocols, MPP or Remain in Mexico policy, authorized under section 235(b)(2)(C) of the Immigration and Nationality Act.⁶ MPP required illegal aliens to wait in Mexico during the pendency of their asylum claims. By denying illegal aliens unfettered access into American communities, fraudulent asylum claims decreased exponentially and as a result, migrants, including vulnerable women and children, were discouraged from taking the dangerous journey north.

The current administration also terminated the historic Asylum Cooperative Agreements that President Trump negotiated with the Northern Triangle countries under the authority of section 208(a)(2)(A) of the INA.⁷ Through these agreements, migrants attempting to enter the U.S. illegally were given the opportunity to apply for asylum closer to home. Not surprisingly, just like with MPP, when free access into the U.S. didn't occur, many did not request asylum and simply wanted to return home. Discouraging fraudulent asylum claims disincentivized illegal immigration and saved countless lives.

Abandoning proven and legally-supported policies, the Biden Administration has ceded operational control of the southern border to the Mexican drug cartels by instituting a nationwide catch-and-release scheme that encouraged millions of illegal aliens to be trafficked and smuggled to the southern border and then released into American communities. Put another way, the failure to secure the border has lined the pockets of the cartels by

https://static1.squarespace.com/static/61f366b9dd05336e4a3ce776/t/6305834bc3baf6396d12910/1661305675942/Fentanyl+Deaths_Top+10+COD.pdf.

⁵ Joe Biden, Proclamation on the Termination of the Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction (Jan. 20, 2021), *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

⁶ 8 U.S.C. § 1225(b)(2)(C).

⁷ 8 U.S.C. § 1158(a)(2)(A).



providing an unlimited supply of aliens who are generating billions of dollars in revenue.

Under these America Last policies of the Biden Administration, the Rule of Law has been abandoned and American communities are more dangerous than ever before. Communities across our Nation, including sanctuary cities that impeded immigration enforcement during the Trump Administration, have had enough and are making their voices heard.

But the negative downstream effects of illegal immigration do not end there. Our public schools are overwhelmed by the record number of unaccompanied alien children allowed into the country. Hospitals are left to foot the bill for the uncompensated healthcare provided to illegal aliens. And, most relevant to today's hearing, the Biden Administration's open border policies have distorted the labor market by their decision to issue Employment Authorization Documents (EADs) or work permits, to millions of illegal aliens to take American jobs.⁸

Here are the primary ways the Biden Administration is getting illegal aliens into the workforce to the detriment of American workers.

Fraudulent Asylum Claims to Obtain a Work Permit

The root cause of the border crisis is the Biden Administration's refusal to enforce our immigration laws. According to section 235 of the INA, illegal aliens apprehended at the border who make asylum claims are required to be detained or wait in Mexico until their claim is decided by an immigration judge.⁹ The Biden Administration is doing neither. Illegal aliens, the cartels, and human traffickers know that simply claiming an intention to seek asylum—regardless of how baseless the claim—will allow them to be quickly processed out of DHS custody and released into American communities. Importantly, no more than 15% of the illegal aliens who make asylum claims at the southern border qualify for this humanitarian relief.¹⁰ The rest are trying to game the system and the Biden Administration is encouraging them to do so.

⁸ See <https://www.dhs.gov/news/2023/09/06/dhs-supports-interior-cities-educating-qualified-noncitizens-work-permit>.

⁹ 8 U.S.C. § 1225.

¹⁰ 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>.



While this makes a mockery of the humanitarian relief our country affords those who are legitimately fleeing persecution, the reason nearly every illegal alien at the border makes an asylum claim is because doing so makes them eligible for a work permit. Under section 208(d)(2) of the INA, “[a]n applicant for asylum is not entitled to employment authorization,” but the DHS Secretary has the discretionary authority to make work permits available once the asylum application has been pending for at least 180 days.¹¹ The Biden Administration jumpstarted the 180-day clock by unlawfully treating the written notes from an alien’s credible fear screening as a submitted asylum application.

By comparison, the Trump Administration issued a regulation that required asylum applications to be pending for at least one year before the alien could request a work permit, among other revisions to tighten the standards.¹² By delaying eligibility for a work permit, the Trump Administration discouraged the filing of fraudulent, frivolous, and otherwise non-meritorious asylum claims.

DHS’s Unlawful Categorical Parole Triggers Immediate Work Permit

As previously mentioned, the Biden Administration has shifted policy with the goal of hiding the optics of the border crisis from the American people. This is accomplished through the DHS Secretary’s unlawful use of the parole authority. Under section 212(d)(5) of the INA, the Secretary may parole an inadmissible alien but only on a case-by-case basis for: (1) urgent humanitarian reasons or (2) significant public benefit.¹³ DHS has ignored the statutory requirements and thwarted Congressional intent on ensuring parole is used on a case-by-case basis. By granting wholesale parole to entire classes of inadmissible aliens is patently unfair to other migrants who follow the rules and is a direct violation of the law.

One of the illegal parole programs singled out—and favors—Cubans, Haitians, Nicaraguans, and Venezuelans by allowing up to 360,000 illegal aliens per year from those four countries into the U.S.¹⁴ As a result of this unlawful scheme, these migrants do not appear in U.S. Customs and Border Protection’s monthly southwest border “encounters” data. The separate, and equally unlawful parole program where illegal aliens schedule appointments on the CBP One app is not a new, safe, lawful pathway but a funneling of illegal aliens from between ports of entry to the ports of entry. The result is

¹¹ 8 U.S.C. § 1158(d)(2).

¹² Asylum Application, Interview, and Employment Authorization for Applicants, 85 FR 38532 (June 26, 2020).

¹³ 8 U.S.C. § 1182(d)(5).

¹⁴ <https://www.uscis.gov/CHNV>.



the same: the mass release of illegal aliens into American communities. This policy is nothing short of registering would-be illegal aliens and rewarding them with entry into the U.S. and a work permit.

Parole offers immediate significant benefits to illegal aliens that are not available through the asylum process. For instance, there is not a six-month wait to obtain a work permit—parolees may immediately apply for an EAD.¹⁵ Moreover, illegal aliens who are paroled into the U.S. are not in removal proceedings and do not even have to apply for any form of relief. They are given a free-pass to remain and work in the U.S. for as long as the government allows. Under this administration, a rubber stamp renewal process when the initial parole period ends is all but guaranteed. As I have previously written, “The combination of guaranteed entry to the U.S. with a work permit and minimal chance of future removal further fuels the Mexican cartels and human traffickers because migrants are able to begin repaying their debts.”¹⁶ Additionally, through a combination of loopholes and questionable statutory definitions, illegal aliens with parole become eligible for unemployment payments, welfare, and other taxpayer funded benefits.¹⁷

According to reports, in just a short 30-month span, the Biden Administration has already paroled at least 541,000 illegal aliens into the U.S.¹⁸ This massive illegal exercise of discretion appears to be increasing with more than tens of thousands of parolees being allowed to enter the United States.

Outrageously, DHS is conducting an unprecedented outreach program enticing illegal aliens to apply for work permits to assuage fellow Democrats who have started to criticize the administration’s broken immigration policies.¹⁹ The result: more and more Americans have fewer and fewer jobs available. Simply put, this administration cares more about getting illegal aliens working instead of improving the wages and job opportunities of similarly situated Americans. With the American economy suffering at the hands of this administration’s reckless financial strategy, putting American workers last in this time of need is entirely unAmerican.

¹⁵ <https://www.uscis.gov/humanitarian/employment-resources-for-parolees-in-the-united-states>.

¹⁶ Robert Law, *DHS’s Unlawful Use of Parole is a Profit Driver for Cartels and Human Traffickers*, Aug. 22, 2023 available at <https://americafirstpolicy.com/latest/issue-brief-dhss-unlawful-use-of-parole-is-a-profit-driver-for-cartels-and-human-traffickers>.

¹⁷ *See id.*

¹⁸ Camilo Montoya-Galvez, *U.S. has welcomed more than 500,000 migrants as part of historic expansion of legal immigration under Biden*, CBS NEWS (July 18, 2023), available at <https://www.cbsnews.com/news/immigration-parole-migrants-us-expansion-biden/>.

¹⁹ Camilo Montoya-Galvez, *U.S. reminds migrants to apply for work permits following pressure from new-york-other-cities*, CBS NEWS (AUG. 31, 2023), available at <https://www.cbsnews.com/news/u-s-reminds-migrants-to-apply-for-work-permits-following-pressure-from-new-york-other-cities/>.



Open Borders Fuels Exploitative Migrant Child Labor

In the past 30 months, more than 388,000 unaccompanied alien children have been trafficked or smuggled to our southern border.²⁰ The trauma, mental, physical, and sexual abuse that many of them are subjected to on the journey north does not end at the border. As a bombshell report from the New York Times exposed, the Biden Administration has lost contact with more than 85,000 unaccompanied alien children after releasing them to sponsors.²¹ That article ran in February 2023 so it would not be surprising if the current number of lost unaccompanied alien children is even higher. A key driver of this is the irresponsible decision of the Biden Administration to release unaccompanied alien children to unvetted sponsors and to discontinue DNA testing at the southern border to validate claimed familial relationships.²²

Undoubtedly, many of these vulnerable unaccompanied alien children the administration has lost contact with were handed over to traffickers and other abusive adults. As the New York Times reporting explains, most of these migrant children work in jobs that carry a high risk of injury or death.²³ The harsh reality, as summarized by the New York Times, is that “This shadow work force extends across industries in every state, flouting child labor laws that have been in place for nearly a century.”²⁴

In an April 2023 follow up article titled, *As Migrant Children Were Put to Work, U.S. Ignored Warnings*, the New York Times detailed extensive failures across the Biden Administration to stop the known reports of tens of thousands of unaccompanied alien children being subjected to abusive work conditions.²⁵

Conclusion: Illegal Immigration Harms American Workers

The number one priority for the federal government in the implementation of U.S. immigration policy should be protecting the sovereignty and prosperity of the American people. Instead, the Biden Administration has flipped this logic on its head, prioritized illegal aliens, and sidelined American workers.

²⁰ <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

²¹ Dreier, Hannah, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, NEW YORK TIMES (Feb. 25, 2023) available at <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

²² See Kristen Ziccarelli, *Illegal immigration is bringing slavery into America*, WASHINGTON TIMES (July 1, 2023), available at <https://www.washingtontimes.com/news/2023/jul/1/illegal-immigration-is-bringing-slavery-into-ameri/>.

²³ *Id.*

²⁴ *Id.*

²⁵ Dreier, Hannah, *As Migrant Children Were Put to Work, U.S. Ignored Warnings*, NEW YORK TIMES (Apr. 17, 2023), available at <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>.



According to Census Bureau data, illegal aliens are less educated and lower skilled than the general native-born American population.²⁶ The resulting oversupply of workers at the bottom of the labor market due to the pro-illegal alien policies of the Biden Administration reduces the wages and job opportunities for Americans at that level. Specifically, the current high levels of illegal immigration harm U.S. workers without a college degree, including minorities, the young, the disabled, and other marginalized workers. These Americans are usually the last into the workforce during economic good times and the first to be let go during economic declines.

Instead of confronting the reality of a reduced labor force participation rate of working aged Americans, the Biden Administration is opting to use unlawful means to import cheap, illegal alien labor.

Thank you and I look forward to answering your questions.

²⁶ Steven Camarota & Karen Zeigler, *Immigrants in the United States, 2015*, CENTER FOR IMMIGRATION STUDIES (Oct. 3, 2016), available at <https://cis.org/Report/Immigrants-United-States-2015>.

