

H.R. 29, THE BORDER SAFETY AND SECURITY ACT

The only way to regain operational control of our border is for Congress to halt the Biden administration's abusive "encounter and release" policies that have empowered cartels, endangered migrants, and harmed Americans during the largest border security crisis in modern American history. These policies – of releasing migrants with "notices to appear" or under "parole" authority – undermine both the spirit and the letter of the law to detain and properly process.

H.R. 29 would immediately reverse this and put an end to years of chaos at our southern border. While still allowing migrants to claim asylum under our laws, the bill simply requires the Secretary – similar to Title 42 authority during the COVID-19 pandemic – to turn away at the border unless he determines that we are detaining migrants pending full adjudication of asylum or other legitimate claims.

The "Border Safety and Security Act" will:

- Provide the Secretary of DHS with authority to turn away migrants who do not have valid entry documents if the Secretary sees it necessary to obtain operational control of the border.
- Require the Secretary to use this "turn away" authority when an illegal immigrant cannot be:
 - Detained through the pendency of an asylum claim, or
 - Placed in a program similar to the previous administration's Migrant Protection Protocols (Remain in Mexico)
- Allow State AGs the ability to enforce the bill through suit for injunctive relief.

The intensity of this crisis merits a strong, effective response:

- Secretary Mayorkas has released between 1-2 million migrants illegally into American communities, heavily through abuse of parole authority which is supposed to be used on a "case-by-case" basis.
 - In just the first 15 months of his tenure, DHS released 836,225 people encountered at the border.
- Releases create a "pull factor" for more migrants to take the dangerous journey to our border.
 - More than 4 million migrants have done so during the Biden Administration, and we now consistently see some 7,000 people per day crossing our southern border.
- Illegal border traffic is driven by cartel smuggling – now a billion-dollar industry – and perpetuates the abuse, assault, sex trafficking, torture, and death of migrants smuggled.
- CBP is too overwhelmed "processing" to fully patrol the border – leaving gaps for dangerous drugs such as fentanyl (killing at least 72,000 Americans in 2021) as well as "got aways" (at least 1 million under Biden) who are likely the most dangerous border crossers.

It doesn't have to be this way. As a nation of laws, we sensibly require that we detain asylum seekers pending adjudication of a claim – providing a natural mechanism to deter migrants who do not have a true claim to asylum from making the dangerous journey to our border – just to be released. Similarly, the Trump administration's use of the "Migrant Protection Protocols" program demonstrated additional options to avoid "encounter and release," which successfully reduced the flow of migrants at our southern border. Most notably, the use of Title 42 authority during the COVID-19 pandemic – supported by all Republicans – reinforced that the U.S. can and should exercise the power to turn away to protect Americans and migrants alike.

H.R. 29, THE BORDER SAFETY AND SECURITY ACT

What we are seeing at our southern border requires a response sufficient to stop the crisis. H.R. 29 will dramatically reduce the flow and end this crisis while doing nothing that DHS is either not already doing or is otherwise allowed to or actually required to do under current law.

The Secretary is abusing current law, purposefully, to release encountered migrants rather than detain.

- 8 U.S. Code § 1225 already requires illegal migrants that claim asylum to be detained for the pendency of the adjudication of his or her asylum claim. However, far too many are being released which creates a pull factor for more to come.
- In most cases, Secretary Mayorkas is abusing “parole authority” to circumvent the law – 8 U.S. Code § 1182 provides that parole be used “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”
 - Secretary Mayorkas is not using this statute on a “case-by-case” basis and there is a risk of absconding – “from 1996 through 2017, 37% of all aliens free pending trial disappeared.”

Empowering, or requiring when appropriate, the DHS Secretary to “turn away” is consistent with existing law and his duty to secure the border.

- The “Secure Fence Act of 2006” already requires that the DHS Secretary “take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control...” This requirement is not a radical or even partisan idea. In fact, then-Senator Joe Biden and current Senate Majority Leader Chuck Schumer voted for this.
- Turning away illegal migrants is not a new concept – the public health authority commonly referred to as “Title 42” has allowed DHS to turn away migrants at our border since March of 2020. In fact, the Biden Administration has used this each day since January 2021 and the Biden Administration has actually appealed court decisions that would have terminated the policy. Importantly, every Republican ran campaigns on this and Members on both sides of the aisle support this policy.

Requiring the Secretary to detain – and not release – for the pendency of adjudication of asylum claims is consistent with current law and maintains both the ability to grant asylum as well as the ability to protect “unaccompanied alien children” (UACs) from harm.

- This bill does not change the ability for migrants from any country to seek asylum at our border. Asylum seekers will only be detained until their claim for asylum is adjudicated. Upon adjudication they will be either be released or removed as current law provides.
- The Migrant protection protocols program is permissible by statute in order to give additional flexibility to return migrants to contiguous countries where they can await adjudication of their asylum claim by an immigration court.
- The U.S. children from contiguous countries are already returned in most cases. This loophole has encouraged more UACs from non-contiguous countries to be handed off to cartels who abuse them on the journey and abandon them at our border. We must stop this pull factor by “rescuing and returning” children to their home countries instead of releasing them into the U.S.

Empowering State AGs to enforce this law through suit for injunctive relief is consistent with existing policies and helps hold the Secretary and the President accountable.

- State Attorneys General have the power to sue the U.S. government to get injunctive relief surrounding border security and immigration laws, and the legislation is consistent with that.