



# Analysis of the Senate Border Bill

## (An Amendment in the Nature of a Substitute to H.R. 815)

- [Proponents](#) of the Senate border bill contends “it would have overhauled our asylum laws ... and given the President new authorities to close the border”.
- In reality, it would codify into law the very Biden administration border-migrant release policies that have been driving the migrant catastrophe at the Southwest border for the last 39 months, and make it much more difficult for a future administration to secure the border.
- Border Patrol apprehensions at the Southwest border soared from just over 400,000 in [FY 2020](#) to more than 2.2 million in [FY 2022](#), a 450 percent increase in two years. The number of known “[got-aways](#)” — aliens who evaded apprehension to enter the United States illegally — rose from an average of less than 150,000 in the 11-year period between FY 2010 and FY 2020 to more than 670,000 in FY 2023.
- In a March 2023 [order](#), federal district court Judge T. Kent Wetherell II rejected DHS’s argument that “geopolitical factors” like “climate change” and poverty are driving this border surge, concluding instead that this “crisis” is occurring now because administration officials have:

*effectively incentivized what they call “irregular migration” ... by establishing policies and practices that all-but-guaranteed that the vast majority of aliens arriving at the Southwest Border who were not excluded under the Title 42 Order would not be detained and would instead be quickly released into the country where they would be allowed to stay ... while their asylum claims were processed or their removal proceedings ran their course.*

- Rather than reversing those “policies and practices”, the bill instead reverses existing statutory mandates requiring DHS to detain inadmissible “applicants for admission” (including illegal migrants) and rewrites the immigration laws to give DHS unfettered authority to release any alien who “indicates an intention to apply for” asylum — based solely on purely subjective “operational circumstances” — and actually mandates their release.
- That provision of the bill (section 3141) would create a purely one-sided process allowing USCIS asylum officers (AOs) to adjudicate those aliens’ asylum claims following non-adversarial interviews that lack the protections current procedures (overseen by immigration judges — “IJs” — in removal proceedings) include to ensure that aliens are not improperly granted asylum, a status that places the asylee on a path to citizenship.

- Proponents contend this process would speed asylum adjudications, but such improvements are likely illusory. Current [law](#) already requires IJs to adjudicate those claims within 180 days, but Biden’s migrant releases have so overwhelmed the courts that this goal is unattainable — except in cases in which aliens are detained.
- That provision would, however, speed the issuance of employment authorizations to those aliens, creating a “jobs magnet” drawing more aliens to enter illegally.
- Separately, the bill rewrites DHS’s general alien arrest and release authority in [section 236\(a\)](#) of the Immigration and Nationality Act (INA) to allow the department to release any alien stopped at the border on the alien’s own recognizance.
- The Center has long [argued](#) — and Judge Wetherell specifically found — that the current section 236(a) language does not permit such releases, but that has not stopped the administration from releasing nearly 313,000 illegal migrants apprehended at the Southwest border using that purported power in the first [seven months](#) of FY 2024 alone. This amendment simply codifies and blesses the administration’s present improper use of this release authority.
- The bill also makes cosmetic changes to the low “credible fear” bar millions of migrants and smugglers have exploited to enter the United States illegally, but as the Center has [explained](#), that amendment fails to raise, let alone fix, that screening standard. In fact, it arguably lowers the standard, which will itself allow for millions of new abuses of our humanitarian protections.
- The bill would facilitate the hiring of additional Border Patrol agents, but also imposes new “training” requirements on current agents, requiring them to receive “relevant cultural, societal, racial, and religious training, including cross-cultural communication skills”. Agents are already overworked, and it’s questionable whether they need such instruction.
- The bill would create “emergency” authority allowing the president to expel illegal migrants once CBP Southwest border encounters reach 4,000 per day, and mandate expulsions when encounters reach 8,500 per day or there is a seven-day average of 5,000 encounters. This “5,000 per-day” limit, however, is riddled with loopholes and sunsets that undermine any effectiveness the concept may have had.
- More saliently, however, this proposal signals a concession that 5,000 apprehensions per day (1.825 million per year) is an acceptable level of illegal immigration. In the 13-year period between FY 2007 and FY 2019, agents apprehended [on average](#) 1,354 illegal migrants per day — just 27 percent of what this “emergency authority” would allow. This proposal far exceeds historical averages.
- Most critically, however, this bill would make it much more difficult for a future administration to gain “operational control” of the Southwest border, because as noted, the amendments erase detention mandates the Supreme Court has [recognized](#) currently bar migrant releases, opening the door to thousands of frivolous “habeas” suits filed by border aliens seeking release into the United States.