

In Perspective: The Historic Surge of Illegal Immigration Under President Biden

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International audiences who follow American media are aware that under President Joe Biden, “unprecedented migration” to the United States occurred. The term migration is wholly appropriate here in the sense that millions of people from around the world crossed the U.S. border. However, under U.S. law, these migrants were overwhelmingly inadmissible aliens – an alien defined as a non-citizen – who had no right to enter the country. U.S. immigration law states that inadmissible aliens, even those who claim asylum, “shall be detained” until their cases are fully adjudicated.¹ Many who crossed the border over the last four years were subject to expedited removal, eliminating the need for a hearing before an immigration judge before their deportation.² Despite adequate resources at his disposal and the full authority to prevent illegal immigration, President Biden ordered the release of millions of inadmissible aliens into the interior of the United States.

During the 2024 presidential campaign, Donald Trump promised “mass deportations.” Trump, and his “Border Czar” Tom Homan, former acting director of U.S. Immigration and Customs Enforcement (ICE), have indicated that their priority is the apprehension and removal of criminal aliens, and those who pose national security or public safety risks. If enforcement is to extend to all illegal aliens, especially those who are employed in lesser-skilled occupations – a cohort that has been protected by previous administrations – remains to be seen. There is no question that the law applies equally to any alien unlawfully present in the United States, and that the Constitution requires that the president “shall take Care that the Laws be faithfully executed.”³

An Historic Surge: Mass Illegal immigration Under President Biden

There are three main ways that illegal immigration into the United States occurs (illegal entry, visa overstays and Biden’s newly designed “pathways”). The majority of inadmissible aliens illegally cross the U.S.-Mexico border (the numbers coming illegally across the U.S.-Canada border greatly increased over the last four years but were still minuscule in comparison).⁴ Those “encountered” by Border Patrol Agents during President Biden’s term were tallied, usually finger printed, identified to the best of Border Patrol’s ability, registered in a database, and in many cases released to continue on their way (what is known as “catch and release”). Causing outrage among many Americans was that fact that the Department of Homeland Security transported large numbers of these illegal border crossers to their destination of choice within the United States, or that their travel was facilitated by NGOs funded by taxpayer money.⁵

Other illegal border crossers, referred to as “gotaways” are those who were not encountered by Border Patrol. This group is comprised of two types, known and unknown. With known gotaways, there is evidence of their entry – direct observation, video surveillance, sensor detection, footprint evidence, etc. The number of these crossings are estimated by Border Patrol. The number of unknown gotaways is purely speculative. According to Border Patrol Agents, drug smugglers account for much of this traffic, but it’s impossible to know who these individuals are.⁶ What is especially concerning about unknown gotaways in recent years is that the Biden Administration made it very easy for inadmissible aliens without previous serious criminal convictions, or who were not flagged as suspected gang members or potential terrorists, to enter the United States. It stands to reason that some of these unknown border crossers are likely to be public safety or national security threats.

The second route to illegal immigration is a visa overstay. This is when an individual enters the United States on a legal, non-immigrant visa and remains past the required departure date of the visa. The Department of Homeland Security [DHS] does not maintain, despite it being mandated by law since 1996, an entry-exit system to track the departures of non-citizens.⁷ Further, former DHS Secretary Alejandro Mayorkas put a policy in place in September 2021 that shielded visa overstayers from immigration enforcement unless they also had committed an additional serious crime.⁸ This policy was previously implemented under the Obama Administration, when Mayorkas served as the Director of U.S. Citizenship and Immigration Services.⁹

Illegally entering the United States is a crime, the first offense is a misdemeanor, the second offense a felony. Most illegal border crossers are not charged with these crimes since that would incur the time and expense of a criminal trial. Because illegal aliens do not possess the same level of civil rights as citizens and legal residents, immigration judges operate under the executive branch (Department of Justice), not the judicial branch, and preside over civil hearings.¹⁰ Immigration courts can impose 3-, 10-year, or permanent bars on reentry, based on how long an individual was unlawfully present in the United States and/or repeated violations. Overstaying a visa is not a criminal offence, though visa overstayers are also considered unlawfully present and are subject to removal and bars on reentry.

“New Lawful Pathways?”

The third and most novel way inadmissible aliens entered the United States under President Biden was through what his administration termed new “lawful pathways:” humanitarian parole and the CBP One mobile app.¹¹ Both Biden and Mayorkas claimed that the executive branch had the authority to allow inadmissible aliens to enter and work in the United States despite these actions violating existing law.¹²

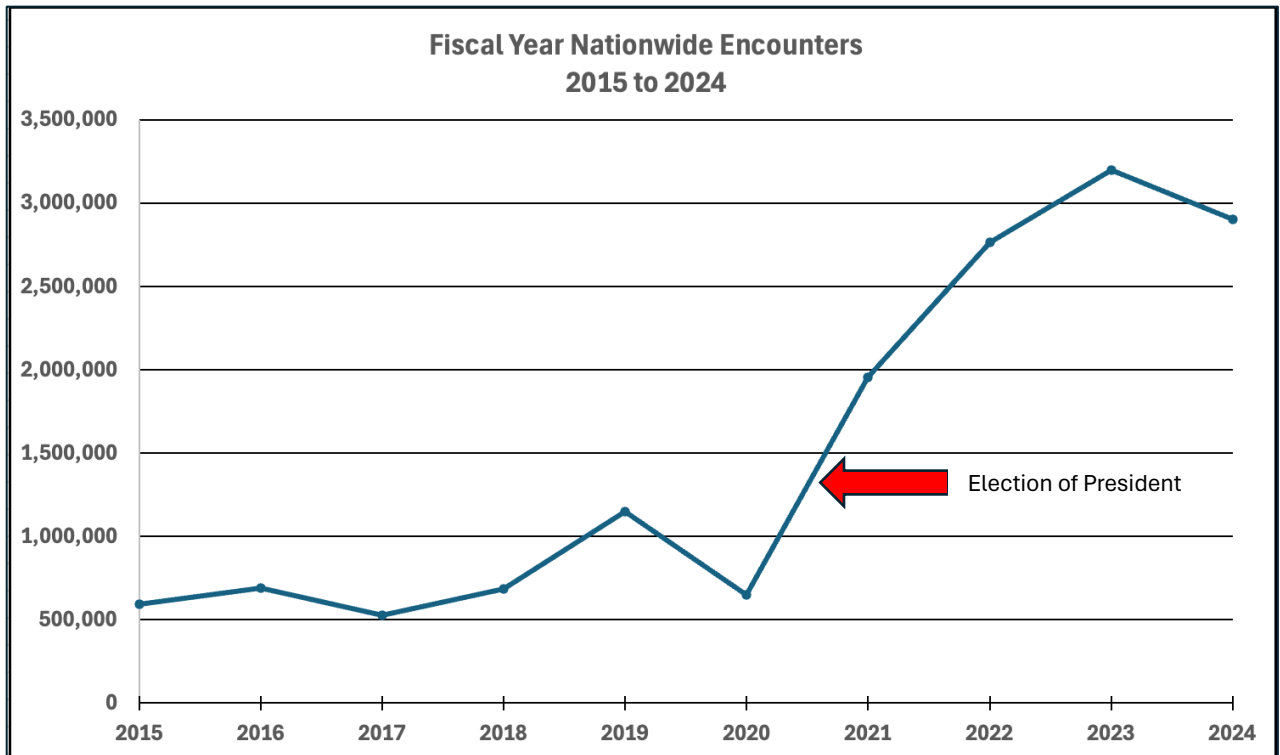
It is true that the president has the authority to use humanitarian parole, and that authority is “justified only on a case-by-case basis for ‘urgent humanitarian reasons’ or ‘significant public benefit.’”¹³ President Biden used parole on a country-wide basis, most notably by allowing Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV), as well as Afghans and Ukrainians to qualify not on a case-by-case basis but based on nationality.¹⁴

There isn’t even a tenuous foundation for illegal entry though the use of the CBP One app. Inadmissible aliens “without appropriate documents for admission” cannot enter the United States lawfully simply because they make an appointment through a mobile application to show up at a Port of Entry at a particular day and time.¹⁵

This usurpation of Congress’ legislative prerogative is very dangerous as it undermines the rule of law and threatens the system of checks-and-balances upon which the United States’ constitutional order rests. Mayorkas was impeached by the House of Representatives on February 13, 2024, in part because Mayorkas “willfully and systematically refused to comply with Federal immigration laws.” Yet, the House voted two weeks later to fund Mayorkas’ illegal policies by approving a federal budget that did not specifically restrict money from being directed to the very programs for which Mayorkas was impeached. With Trump’s win, these programs are quickly come to an end. However, any lasting fix must come from Congress in order to better safeguard against rule-making by executive fiat.

Illegal Immigration by the Numbers

There have been over 11 million encounters of inadmissible aliens under the Biden Administration, but this total includes individuals who may have been encountered multiple times by Border Patrol.¹⁶ So, how many inadmissible aliens did the Biden Administration allow to enter the United States?



Source: U.S. Customs and Border Protection: “U.S. Border Patrol and Office of Field Operations Encounters by Area of Responsibility and Component”

The best way to measure the size of the illegal immigration over time is to look at two Census Bureau monthly surveys (American Community Survey, Current Population Survey). Using this data, we can compare the increase in the foreign-born population to the number of foreign-born legally admitted to the United States. Given the massive inflow of illegal immigrants under President Biden, there will be a lag time before the survey results reflect the extent of the population increase. Moreover, those who are illegally residing in the United States will be harder to contact and, for obvious reasons, will be less willing to respond to requests for information from the federal government. However, these surveys are valuable sources for measuring the size and demographic makeup of the U.S. population.

We can also rely on information from DHS, provided either in response to requests from members of Congress or leaked to media outlets by federal employees within DHS, as well as through Freedom of Information Act (FOIA) requests. The border crisis has been one of the issues most reported on over the last four years by the U.S. media, so scrutiny of illegal immigration has been much higher than in past decades. Immigration was a top issue in the 2024 presidential election and acknowledged as one of the main reasons Trump won back the White

House. Disagreement is not so much over the numbers as much as the legality of Biden’s immigration policies and their effects.

Illegal Immigration Under President Joe Biden, January 2022 – January 2025¹⁷

‘Catch-and-release’	3.5 million – 4.5 million
Parolees	1.5 million – 1.75 million
CBP One app	1 million – 1.25 million
Known Gotaways	2.2 million – 2.5 million
Unknown Gotaways	175,000 – 225,000 ¹⁸
Visa Overstays	2.0 million to 2.3 million

In total, the Biden Administration released between 6 and 7.5 million inadmissible aliens into the United States. In addition, there were between 2.3 million and 2.7 million gotaways (known and unknown), and 2 million to 2.3 million visa overstays. This has increased the illegal alien population to between 14 and 17 million, up from estimates of between 10 and 12 million before President Biden took office.¹⁹

Some have argued that the illegal alien population was much higher than the most commonly accepted estimates, even before the so-called Biden border surge, putting it at 30 million or higher. Demographers do not see evidence to support these higher numbers. Part of the discrepancy is presumably due to mistaking total immigration (legal and illegal) with net international immigration. The latter measures the difference between the number of immigrants who enter a country and the number of emigrants who exit that country over a particular time period. The foreign-born population is not static, and the illegal status of so many foreign-born in the United States accounts for notable fluctuations due to the economic conditions or the level of enforcement (many also “adjust their status” and become legal aliens). The expectation is that the illegal alien population will significantly decrease over the next four years under the new Trump administration.

Conclusion

Immigration has long been a contentious issue in American politics, especially when it comes to the federal government’s refusal to secure the border and enforce immigration law. Donald Trump’s decisive reelection – only the second time in U.S. history that a president has served two non-contiguous terms – was a powerful rejoinder to the immigration policies of his predecessor. Polls consistently showed that dissatisfaction with immigration was at or near the top of voter’s concerns. Trump won 45 percent of the Hispanic vote and made significant gains with Black men, causing prominent Democratic voices to reevaluate their party’s approach to open borders and ever-increasing immigration levels. Talks of a political realignment are premature, but what has become clear over the last few election cycles is that voters support genuine immigration reform, not constant bromides from politicians about how “America is a nation of immigrants.”

Of course, politics is not policy. Republicans have control of the White House and both chambers of Congress at least until 2027, albeit with a very narrow majority. Campaigning often proves more difficult than governing. The question remains: Will the federal government reestablish the rule of law and regain control of the U.S. immigration system, not just by presidential executive orders, but by substantive changes that can survive the fluctuations of partisan politics?

- ¹ George Fishman, “Does a Detention Mandate Really Mean That Detention Is Mandatory?: Executive branch disregard of the law fuels the border crisis,” Center for Immigration Studies, June 6, 2022, <https://cis.org/Fishman/Does-Detention-Mandate-Really-Mean-Detention-Mandatory>.
- ² Congressional Research Service, “Expedited Removal of Aliens: Legal Framework,” October 8, 2019, <https://crsreports.congress.gov/product/pdf/R/R45314>; American Immigration Council, “Fact Sheet: A Primer on Expedited Removal,” December 2023, https://www.americanimmigrationcouncil.org/sites/default/files/research/primer_on_expedited_removal_factsheet_2023.pdf.
- ³ Some groups who support systematic enforcement, including NumbersUSA, have expressed “concern that [enforcement is] going to be limited, and that those who otherwise have not committed crimes beyond being in the country illegally may be allowed to stay.” Michelle Hackman and Tarini Parti, “Trump Allies Fear Watered Down Deportation Efforts,” *The Wall Street Journal*, December 15, 2024, <https://www.wsj.com/politics/policy/trump-immigration-deportation-promises-worried-allies-6b78418d>.
- ⁴ U.S. Customs and Border Protection, “Nationwide Encounters: U.S. Border Patrol and Office of Field Operations Encounters by Area of Responsibility and Component,” <https://www.cbp.gov/newsroom/stats/nationwide-encounters>, accessed January 21, 2025.
- ⁵ Eric Garner, “‘Not one person has been notified’: Abilene Regional Airport becomes hub for undocumented immigrant transportation,” KTAB/KRBC News, August 5, 2021, <https://www.bigcountryhomepage.com/news/abilene-news/not-one-person-has-been-notified-abilene-regional-airport-becomes-hub-for-undocumented-immigrant-transportation/>. The Heritage Foundation, “Tracking Movement of Illegal Aliens From NGOs to the U.S. Interior,” December 5, 2022, <https://www.heritage.org/the-oversight-project/securing-americas-borders/tracking-movement-illegal-aliens-ngos-the-us>.
- ⁶ Congressional Research Service, “Illicit Drug Smuggling Between Ports of Entry and Border Barriers,” February 7, 2020, <https://crsreports.congress.gov/product/pdf/R/R46218>; Joel Rose, “Part 1: Investigating how illicit fentanyl is actually getting into the U.S.,” August 7, 2023, National Public Radio, <https://www.npr.org/2023/08/07/1192557904/part-1-investigating-how-illicit-fentanyl-is-actually-getting-into-the-u-s>.
- ⁷ Congressional Research Service, “Immigration: The U.S. Entry-Exit System,” May 2, 2023, <https://crsreports.congress.gov/product/pdf/R/R47541>.
- ⁸ Eric Ruark, “Leaked Data & Sec. Mayorkas Statements Suggest Immigration Enforcement Is Virtually Ended,” NumbersUSA, October 18, 2025, <https://www.numbersusa.com/blog/leaked-data-sec-mayorkas-statements-suggest-immigration-enforcement-virtually-ended/>.
- ⁹ Office of the Director, Department of Homeland Security, U.S. Customs and Immigration Enforcement, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens,” June 17, 2011, <https://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.
- ¹⁰ Immigration courts are Article III courts, referring to the pertinent section of the U.S. Constitution which allows for their creation and oversight. See U.S. Department of Justice, Executive Office for Immigration Review, “Fact Sheet: Observing Immigration Court Hearings,” February 2017, <https://www.justice.gov/eoir/observing-immigration-court-hearings>, accessed January 18, 2025. “Immigration court hearings are civil administrative proceedings that involve foreign-born individuals (called respondents) whom the Department of Homeland Security (DHS) has charged with violating immigration law.”
- ¹¹ U.S. Citizenship and Immigration Services, “Humanitarian or Significant Public Benefit Parole for Noncitizens Outside the United States,” https://www.uscis.gov/humanitarian/humanitarian_parole; U.S. Customs and Border Protection, “CBP One Mobile Application,” <https://www.cbp.gov/about/mobile-apps-directory/cbpone>, accessed January 18, 2025; Department of Homeland Security, “Fact Sheet: Data From First Six Months of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans Shows That Lawful Pathways Work,” July 25, 2023, <https://www.dhs.gov/news/2023/07/25/fact-sheet-data-first-six-months-parole-processes-cubans-haitians-nicaraguans-and>, accessed January 18, 2025. For an overview of how the Biden Administration operated parole programs outside the parameters established by law, see Nayla Rush, “Parolees Paroling In More Parolees How many of the inadmissible aliens given parole were sponsored by individuals with no legal immigration status either?,” Center for Immigration Studies, March 13, 2024, <https://cis.org/Rush/Parolees-Paroling-More-Parolees>.
- ¹² The White House, Briefing Room: Statements and Releases, “Fact Sheet: President Biden Announces New Actions to Secure the Border,” June 4, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/04/fact-sheet-president-biden-announces-new-actions-to-secure-the-border/>, accessed January 18, 2025; Department of Homeland Security, News: Speeches, “Secretary Mayorkas Remarks at a Media Availability Outlining Planning and Operations Ahead of the Lifting of the Title 42 Public Health Order,” May 10, 2023, <https://www.dhs.gov/news/2023/05/10/secretary-mayorkas-remarks-media-availability-outlining-planning-and-operations>, accessed January 18, 2025. These actions clearly violate statutory law. See footnote 1, and 8 U.S. Code § 1324a, “Unlawful employment of aliens.” For a legal discussion of these schemes, see Elizabeth Jacobs, “Work Authorization Expansion Is the Problem — Not the Solution to Cities’ Migrant Issues,” Center for Immigration

Studies, September 15, 2023, <https://cis.org/Jacobs/Work-Authorization-Expansion-Problem-Not-Solution-Cities-Migrant-Issues>.

¹³ U.S. Code 8 CFR § 212.5, “Parole of aliens into the United States.”

¹⁴ U.S. Citizenship and Immigration Services, “Processes for Cubans, Haitians, Nicaraguans, and Venezuelans Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,” <https://www.uscis.gov/CHNV>, accessed January 18, 2025; Camilo Montoya-Galvez, “U.S. won't extend legal status for 530,000 migrants who arrived under Biden program,” CBS News, October 4, 2024, <https://www.cbsnews.com/news/venezuelans-legal-status-chnv-program/>.

¹⁵ U.S. Customs and Border Protection, “CBP One Fact Sheet – English,” <https://www.cbp.gov/document/fact-sheets/cbp-one-fact-sheet-english>, accessed January 13, 2025.

¹⁶ U.S. Border and Customs Protection, “CBP Enforcement Statistics,” <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>, accessed January 13, 2025.

¹⁷ U.S. Customs and Border Protection, “Nationwide Encounters;” Department of Homeland Security, Office of Homeland Security Statistics, “Estimates of the Unauthorized Immigrant Population Residing in the United States,” <https://ohss.dhs.gov/topics/immigration/unauthorized-immigrants/estimates-unauthorized-immigrant-population-residing>, accessed January 18, 2025; Camilo Montoya-Galvez, “Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting,” January 22, 2024; Jonathan Mejia, “CBP One App used by migrants as gateway to the United States,” Fox 26 Houston, January 17, 2025, <https://www.fox26houston.com/news/cbp-one-app-migrants-gateway-united-states>; Elliot Spaget, “Border app that became ‘a salvation’ for migrants to legally enter the US may end,” ABC News, January 17, 2025, <https://abcnews.go.com/International/wireStory/border-app-salvation-migrants-legally-enter-us-end-117775523>;

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¹⁸ This figure falls under what former Defense Secretary Donald Rumsfeld would refer to as a “known unknown.” There are various estimates of how many individuals are able to illegally enter the United States undetected. Given that illegal entry was facilitated under President Biden, it is likely that unknown gotaways considerably declined relative to their proportion of illegal border crossings previous to January 2021. They are estimated here at 5% of the total illegal border crossing. U.S. Department of Defense, News Transcript: DoD News Briefing - Secretary Rumsfeld and Gen. Myers,” February 12, 2002, <https://web.archive.org/web/20160406235718/http://archive.defense.gov/Transcripts/Transcript.aspx?TranscriptID=2636>, accessed January 18, 2025.

¹⁹ Bryan Baker and Robert Warren, “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2018–January 2022,” Department of Homeland Security, Office of Homeland Security Statistics, April 2024, https://ohss.dhs.gov/sites/default/files/2024-06/2024_0418_ohss_estimates-of-the-unauthorized-immigrant-population-residing-in-the-united-states-january-2018%25E2%2580%2593january-2022.pdf; Migration Policy Institute, “Frequently Requested Statistics on Immigrants and Immigration in the United States: Unauthorized Immigrants,” March 13, 2024, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#unauthorized>; Jeffrey S. Passel and Jens Manuel Krogstad, “What we know about unauthorized immigrants living in the U.S.,” Pew Research Center, July 22, 2024, <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/>; Robert Warren, Center for Migration Studies, “US Undocumented Population Increased to 11.7 Million in July 2023: Provisional CMS Estimates Derived from CPS Data,” September 5, 2024, <https://cmsny.org/us-undocumented-population-increased-in-july-2023-warren-090624/>; Center for Immigration Studies, “Why Legal Immigration Numbers Matter;” Federation for American Immigration Reform, “How Many Illegal Aliens Are in the United States? 2023 Update,” June 22, 2023, <https://www.fairus.org/issue/how-many-illegal-aliens-are-united-states-2023-update>, accessed January 18, 2025.

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