

Biden’s Open Borders and Non-Enforcement Mean Americans Play “Recidivist Roulette” with Criminal Aliens

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KEY TAKEAWAYS

President Biden’s open border policies have allowed tens of thousands of aliens to enter the U.S. who have criminal records both here and in their home countries.

Mass processing and release undermines the interdiction of criminals, and Secretary Mayorkas’s lack of enforcement allows many more to remain here indefinitely.

All crimes committed by aliens who are here illegally are preventable. U.S. citizens are thus subjected to a “recidivist roulette” with predictable harm.

Americans are learning on a weekly—and sometimes daily—basis of preventable crimes committed at the hands of foreign nationals (aliens) illegally present in the U.S. This is occurring because the Left has created the perfect storm of open borders, non-enforcement of immigration law, non-prosecution of crimes,¹ and sanctuary policies that prevent state and local law enforcement from sharing information and cooperating with federal immigration officers to keep criminal aliens detained for deportation. The Left is playing Russian Roulette with American lives.

Homeland Security Secretary Alejandro Mayorkas frequently touts his expansion of “safe, orderly, and lawful” immigration pathways, but any pathway to enter and remain in the U.S. will be exploited by aliens looking for an easy way in, as well as criminals

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and others intending to harm Americans. This paper will give examples of crimes committed by aliens who exploited open borders and violated our immigration laws through various avenues, as well as cases in which pro-criminal prosecutors refused to prosecute criminals and sanctuary leaders refused to cooperate with U.S. Immigration and Customs Enforcement (ICE) to keep the criminals off the streets. The outcome is the same: avoidable crimes against Americans. This paper will also provide needed policy and funding changes to prevent alien crimes and will recommend state legislation to oppose sanctuary policies and encourage law enforcement cooperation among state, local, and federal agencies.

Case Studies

The following cases illustrate specific examples of preventable crime and the choices and policy failures that allowed the criminal aliens to be in the United States. Cumulatively, these cases demonstrate that the ease with which aliens can cross the border undetected and/or unvetted and remain here illegally with *de facto* impunity makes communities throughout our country less safe.

Asylum Claimants. Honduran Carlos E. Corrales-Ramirez entered the U.S. illegally in 2014 as a minor. He later applied for asylum, which was granted in 2020. On March 3, 2023, U.S. Customs and Border Protection (CBP) and the New York State Police arrested Corrales-Ramirez (at age 20) on the suspicion that he was in the country illegally. They found that he was wanted for a February “assault with a knife in Maryland.” He should then have been extradited to Maryland, but due to what was charitably called a “communication breakdown” between the states of New York and Maryland, he was released from custody in New York after 90 days. On September 3, police in Troy, New York, arrested Corrales-Ramirez as a suspect in the subsequent stabbing death of Jario J. Hernandez-Sanchez.²

Analysis. Aliens present in the United States, whether they crossed the border illegally or entered using a valid visa or other documentation, can apply for asylum under current law.³ The backlog in total asylum claims is many years long,⁴ and only six months after filing an application, an alien becomes eligible for work authorization—the real reason so many aliens file asylum applications.

The Corrales-Ramirez case is an example both of poor state-to-state and state–federal cooperation and of so-called bail reform that releases high-risk suspects prematurely. Had Corrales-Ramirez been extradited to Maryland and held pending trial, he would likely not have been free to stab

someone in New York State. If he had been appropriately charged and convicted, then that conviction for assault should have resulted in his removal from the United States.

Catch and Release Cases. In November 2021, Geovani Grevi Rivera-Zavala, a 29-year-old illegal alien from Honduras, was apprehended at the border while using a fake name. He had a criminal record in Honduras but was quickly released into the United States. In May 2023, Rivera-Zavala was arrested and charged with sexual assault of a teenage girl in Prattville, Alabama.⁵ While in a restaurant, he followed the victim into the women's restroom and assaulted her. The girl told her family what had happened, and Rivera-Zavala was apprehended as he tried to leave. In April 2024, Rivera-Zavala pled guilty to second-degree rape and was sentenced to 10 years in prison.⁶ ICE has also lodged a detainer on him. This means that after Rivera-Zavala serves his sentence, state and local law enforcement should notify ICE before they release Rivera-Zavala so that ICE can take custody of him to pursue his removal from the U.S.⁷

Analysis. When aliens are caught by or surrender to the Border Patrol while entering the U.S. illegally, what immigration law requires and what happens in practice during the Biden Administration are two very different things. Aliens entering illegally should be detained pending the outcome of the applicable immigration process.⁸ If they claim asylum, the Department of Homeland Security (DHS) will generally give them a Notice to Appear (NTA) before an immigration court, thus beginning formal removal proceedings under the Immigration and Nationality Act (INA).⁹ Because the Left strongly opposes immigration detention, as a matter of policy, DHS releases the vast majority of aliens for whom the immigration statute mandates detention, failing to fill the ICE detention beds already paid for by America's taxpayers.

Sometimes, ICE will use either ankle bracelets with GPS monitors to track aliens' whereabouts or less intrusive methods under its Alternatives to Detention program. More often, the aliens are simply released on their own recognizance and expected to show up for their immigration court hearings.¹⁰ The wait for this first hearing can be months or years, and the entire process before a decision of either protection or removal—not including appeals—typically took more than four years even before the massive increase in applications after Joe Biden entered the White House in January 2021.¹¹

Since then, the Biden Administration has allowed millions of inadmissible aliens to enter the country who are more often male than female.¹² Men commit violent crime at rates far higher than women.¹³ Based on per-country estimates of criminal activity per given population, the U.S. is probably

releasing dozens of thieves¹⁴ and a few murderers and rapists¹⁵ every month at the border.

In addition to the new criminals arriving each month, the Biden Administration immediately turned a blind eye to those who were already here. Secretary Mayorkas's instructions to ICE to limit interior enforcement¹⁶ has significantly reduced arrest, detention, and deportation levels from prior years. In fiscal year (FY) 2018, ICE arrested almost 23,124 aliens with criminal convictions. In FY 2022, ICE arrested only 6,127 convicted criminal aliens in the interior of the United States, and in FY 2023, it arrested 9,664.¹⁷

There is a high rate of recidivism in the U.S. criminal population: Over 80 percent of state prisoners reoffend within 10 years of release.¹⁸ Assuming that aliens with criminal histories released at the border or given immigration parole reoffend at rates similar to those of U.S. state prisoners,¹⁹ there will be proportionate costs borne by American localities. These include physical and financial harm to victims, diverted law enforcement resources, and burdens on the entire criminal justice system from courts to prisons. As of the first quarter of FY 2023, there were almost 408,000 convicted criminal illegal aliens free in our communities,²⁰ yet the Biden Administration's annual target for deporting them is under 30,000.²¹ President Biden thus asks Americans—not illegal aliens' home countries—to take on the significant risk that illegal alien convicts will reoffend.

Rivera-Zavala's case and similar cases belie Biden Administration claims that aliens are carefully vetted before being released or paroled. That Rivera-Zavala had attempted to enter the United States under a false name was not enough for ICE to detain him pending his removal process. Many aliens deliberately discard their documents and provide no verifiable identification documents to DHS.²² Others provide partial, inaccurate, or false information. Even if inadmissible aliens provide valid identification, DHS does not have timely—or, too often, any—access to the criminal records of most of their home countries—assuming, of course, that such records exist in the first place.²³ Rivera-Zavala's criminal record in Honduras likely was not known to DHS or discoverable when they processed and released him. Unless they have prior criminal records in the United States, vetting of illegal aliens before release is dangerously inadequate.

“Gotaways:” Entry Without Inspection. A Salvadoran alien “unlawfully entered the United States on an unknown date, at an unknown location, and without being inspected, admitted, or paroled by an immigration official.”²⁴ In February 2016, he was arrested by Prince George's County, Maryland, police and charged with trespassing, but the charges were dismissed. In July 2017, he was arrested for domestic violence. In October 2018,

he was arrested and charged with assault. The charges were dismissed by a county district court. The Salvadoran was arrested again in June 2019 and charged with drunk driving and related offenses.

In May 2022, Anne Arundel County, Maryland, police arrested him once more, this time charging him with driving a vehicle not equipped with an ignition interlock, which is used to prevent drunk driving. Although this time the recidivist Salvadoran was convicted and sentenced to a year in jail, he had to serve only four days behind bars before being let out on probation. On October 30, 2023, Baltimore ICE agents arrested him and confirmed that he was an MS-13 gang member from El Salvador. ICE issued him a Notice to Appear before an immigration judge, which might finally result in his deportation.

Analysis. Every year, a certain number of aliens evade any detection by the U.S. Border Patrol and illegally enter the United States between official ports of entry. The U.S. border with Mexico is nearly 2,000 miles long, and the northern border with Canada stretches more than 5,500 miles. The Department of Homeland Security estimates the number of “gotaways” through various methods including visual observation, sensors, cameras, and physical remnants left by illegal border crossers. DHS does not officially release these estimates, but testifying on October 31 before the Senate Homeland Security and Governmental Affairs Committee, Mayorkas estimated there were 600,000 gotaways in FY 2023.²⁵

A CBP source has unofficially disclosed that over 1.8 million known gotaways have evaded the Border Patrol during the Biden Administration.²⁶ Even if Mayorkas had not already curtailed interior enforcement by restricting ICE’s ability to arrest, detain, and remove illegal aliens, there would be no one actively looking for this “known gotaway” population. They tend to come to the attention of law enforcement only when they are involved in subsequent criminal activity.

Because it is much easier to enter the U.S. and simply give themselves up to the Border Patrol, those who take pains to avoid detection may well have criminal records at home or in the U.S. We find out sooner or later, as “the vast majority of those [criminals] released will go on to reoffend.”²⁷ In the U.S., and likely in most countries, a significant amount of crime is committed by a small percentage of the population. The U.S. state prison population contains American citizens, legal residents and visitors, and illegal aliens. As crime researcher Rafael Mangual writes, “the vast majority of U.S. prisoners are violent, chronic offenders.”²⁸

Immigration Parole Cases. Jose Ibarra, a Venezuelan national who crossed into the United States near El Paso, Texas, in September 2022, was

granted immigration parole by the Biden Administration and released into the United States. He was arrested in New York City in September 2023 for driving without a license and endangering the minor child in his vehicle, but New York police released Ibarra before ICE could lodge a detainer against him.²⁹ Later, Ibarra and his brother were caught shoplifting in Georgia but given only misdemeanor citations and steered toward a clearly ineffective “pre-arrest diversion program.”³⁰ In February 2024, Jose Ibarra was arrested and charged with the violent murder of 22-year-old Laken Riley, a nursing student out for a jog in broad daylight in Athens, Georgia.

Analysis. Centuries ago, European armies gave parole (French for “word”) to opposing officers they trusted to refrain from any further combat for the duration of the hostilities in question.³¹ Because of the value put on a gentleman’s word, this worked remarkably well until the 19th century. In the criminal justice context, parole is generally given to offenders who are thought unlikely to abscond or reoffend.

In the immigration context, parole is a discretionary authority by which the Secretary of Homeland Security may allow foreign nationals who do not have the necessary visa to enter the United States “temporarily...on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”³² Notwithstanding congressional intent and clear statutory language that parole be used sparingly, the Biden Administration has allowed nationals from China, Mexico, Russia, and many other countries, some of which are known to harbor active terrorist groups, to apply in advance for parole into the United States using a phone application called CBP One.³³ The Biden Administration later created specific new country-based mass-parole programs for Afghans, then for Ukrainians, and then for Cubans, Haitians, Nicaraguans, and Venezuelans.

A legal challenge by Texas and 20 other states to the Cuba–Haiti–Nicaragua–Venezuela program was filed in January 2023.³⁴ On March 8, the judge ruled that the states did not have legal standing to challenge the program.³⁵

The Biden Administration justifies its parole programs by claiming that those being paroled are seeking asylum and will apply for it in due course. However, it was due to executive abuse of parole to “allow large numbers of aliens into the United States for an extended—or even indefinite—period of time and bypass normal immigration channels” that Congress amended the law in 1996 to specifically exclude granting parole to refugees.³⁶ Nevertheless, Biden’s DHS has granted parole to more than 57,000 Mexican nationals, for example, who are extremely unlikely to be successful in applying for asylum.³⁷

By granting mass parole through nationality-based or class-based programs, the Biden Administration is ignoring both statutory text and intent. In addition, DHS has no routine or reliable means to check the criminal histories of inadmissible aliens in their home countries before letting them into the United States. They would not have had access to Venezuela's records with respect to Ibarra. Evidence has surfaced since the murder of Laken Riley that Ibarra and his brother Diego were members of the violent Venezuelan *Tren de Aragua* gang. The Biden Administration's reckless mass use of parole and a totally inadequate DHS vetting process allowed Laken Riley's alleged killer to enter and then freely—and repeatedly—roam our country.

Visa: Hidden Criminal Record. On November 8, 2023, ICE Enforcement and Removal Operations (ERO) Philadelphia deported Panamanian Felix Valoy Gondola Moreno. Moreno flew into Newark, New Jersey, airport on December 9, 2022, with a valid visa and was admitted by CBP for six months. He did not leave by June as required. He was arrested by ICE in New York on July 17 and served with a Notice to Appear, and in September, an immigration judge ordered him deported. In its press release, ICE announced that “Gondola is wanted by law enforcement officials in Panama for attempted homicide.”³⁸

Analysis. Applying for a visa requires applicants to answer questions in an electronically signed document that would reveal a criminal record or any other issue that would render them ineligible. Visa applicants must also present valid identity documents containing their name and date of birth, and their fingerprints and photograph are verified by a U.S. consular officer at the time of application. All of these are checked against a U.S. federal database of local, state, and national law enforcement information. Any match with a derogatory U.S. record would either render applicants ineligible or require them to apply for a waiver of the ineligibility, if available.

Applicants for immigrant visas (those that allow foreign nationals to settle permanently in the United States and eventually apply for citizenship) are required to present a police clearance showing that they have no criminal record. Applicants for non-immigrant visas (those that allow foreign nationals to visit, study, or work temporarily in the U.S.) do not have to produce a police clearance, but they are usually interviewed by a consular officer who is able to pursue any inconsistencies or areas of concern in the application form and available records.

It is unclear how and when ICE became aware of the homicide warrant for Moreno in Panama, but if the consular officer who issued his visa at the U.S. embassy in Panama City knew about the outstanding warrant, he should

not have issued Moreno a visa. If the CBP agent who inspected Moreno in Newark, New Jersey, was aware of the warrant, he should not have admitted him into the U.S.

Visa: Overstay. On October 17, 2023, ICE ERO Boston arrested an unnamed, convicted Guatemalan sex offender wanted by California authorities. The Guatemalan flew into Los Angeles in September 2011 on a visa, which he overstayed. He was convicted in California Superior Court a decade later on charges of sex with a minor victim and received a three-year sentence in November 2021. He served a year of his sentence in California and was then released but failed to register as a sex offender and moved to Massachusetts without notifying authorities as required under California law.³⁹

Analysis. Millions of foreign nationals enter the U.S. on valid visas every year for such purposes as business meetings, tourism, or university studies. Hundreds of thousands of them breach the conditions of their visas each year by staying past the period for which they were admitted.⁴⁰ Though they entered legally, such overstayers then become removable under U.S. immigration law.

It is unclear what this Guatemalan man's status was between overstaying his visa and his arrest in 2021. In the interest of public safety, he should have been taken into ICE custody upon being released from prison in California and detained pending removal proceedings. However, he was allowed to relocate to Massachusetts. Both California and Massachusetts practice sanctuary policies, refusing to cooperate with federal immigration enforcement to prevent deportations.

Like some U.S. states, some countries also fail to cooperate with ICE by refusing to take back their citizens who are deportable from the U.S., including after they have been convicted of crimes here and have served their sentences.⁴¹ These "recalcitrant" countries either refuse to issue travel documents (passports) or refuse to allow deportation flights to land. During the Trump Administration, the U.S. was able to convince several recalcitrant countries such as The Gambia, Ghana, and Guinea to take back their nationals using a range of tools such as visa sanctions under Section 243(d) of the INA.⁴² Section 243(d) allows the Secretary of Homeland Security to direct the State Department not to issue visas to some or all nationals of countries that refuse to take back their deportable citizens.

However, the Biden Administration's mass releases, paroles, and greatly reduced deportations have allowed the illegal alien population, including many with criminal records, to increase rapidly inside the U.S. Three years into President Biden's term, the ICE webpage discussing INA 243(d)

sanctions lists no current action.⁴³ One of the two “Related Information” links at the bottom of the page is to a press release from 2017, when DHS announced visa sanctions on Cambodia, Eritrea, Guinea, and Sierra Leone.⁴⁴

Visa Waiver Program: Hidden Criminal Record. On October 19, 2023, Columbus ICE agents deported Monteze Leonard Rolle Jr., 21, back to the Bahamas, where he is wanted for murder. Rolle was admitted to the United States on June 29, 2021, at the Orlando, Florida, airport according to the CBP press release. Bahamians can travel to the U.S. without a visa by applying at a CBP preclearance facility before leaving,⁴⁵ but this requires that they have “no criminal record nor any legal ineligibility or inadmissibility.”

Rolle was living in the U.S. on May 9, 2023, when ICE arrested him in Cincinnati. Unless he adjusted to another temporary immigration status or otherwise legally extended his stay, Rolle would have been unlawfully present by that time, two years after being admitted “for a short duration” under the visa waiver program applicable to Bahamians. According to CBP, ICE was “later notified of Rolle’s active warrant in the Bahamas,” which prompted them to arrest him.⁴⁶

Analysis. To have been allowed to use the DHS visa waiver program for the Bahamas, Rolle most likely lied on his application. If CBP knew of Rolle’s Bahamian warrant in 2021, they should not have allowed him to apply for admission at their “Preclearance” facility.

Voluntary Return Cases: “If at First You Don’t Succeed…” On October 26, 2023, Philadelphia ICE agents removed Juan Martinez Merida, who is wanted for murder in his home country of Mexico. According to CBP, Merida “had been detained at the U.S. border at least seven times and allowed voluntary return.” He had entered once again as a “gotaway” before he was arrested by ICE in Philadelphia on August 22, 2023. An immigration judge ordered his removal to Mexico on October 6, 2023.⁴⁷

Analysis. Cases like Merida’s show that if there are no consequences for attempting to enter the U.S. illegally—even repeatedly—motivated aliens will keep trying until they succeed. Granting voluntary return is a discretion CBP can use at the border to save agents time and paperwork. If an alien turns up at an airport with a visa and has no known criminal record, for example, but his visa was revoked for some reason by the issuing embassy, he could be allowed to return home to sort out the visa before re-attempting to enter the United States for a legitimate purpose. However, allowing an alien to return voluntarily more than once, much less seven or more times as in Merida’s case, is feckless law enforcement. Attempting to enter illegally multiple times should result in prosecution and a considerable fine or prison sentence if it is to have any deterrent effect.

Secretary Mayorkas has repeatedly claimed, as he did on May 11, 2023, that “[p]eople who cross our border unlawfully and without a legal basis to remain will be promptly processed and removed.” Mayorkas promised that “an individual who is removed under Title 8 is subject to at least a five-year bar on re-entry into the United States and can face criminal prosecution if they attempt to cross again.”⁴⁸

But these words belie the reality, which is minimal enforcement among the population of criminal aliens. At the end of 2023, there were over 6 million aliens on ICE’s “non-detained docket,” which means all of the aliens in deportation proceedings who are not in ICE or criminal detention. Of these, there were roughly 400,000 aliens who had criminal convictions in the United States.⁴⁹ In FY 2023, ICE arrested a total of 73,822 aliens with criminal histories, and “those arrested had an average of four charges and convictions per individual...”⁵⁰

What Congress and the States Should Do

Crimes committed by illegal and deportable aliens are preventable through proper border security, interior enforcement of immigration laws, prosecution and consequences for committing crime, and cooperation among local, state, and federal law enforcement agencies. To achieve these, the following policy changes and legislation are recommended.

Congress should:

- **Pass** the Secure the Border Act, H.R. 2, through the Senate. The House of Representatives passed this bill in May 2023. To secure the border, H.R. 2 would, among other changes:
 1. End catch-and-release by requiring DHS to detain unlawful border crossers or return them to Mexico, pending the final decisions in their immigration proceedings. It would also end the 20-day immigration detention limitation for families and unaccompanied alien children imposed upon ICE by a single federal judge.⁵¹
 2. Restrict the Secretary of Homeland Security’s discretionary parole authority under the Immigration and Nationality Act to urgent circumstances, such as emergency surgery and testifying in a criminal trial, that do not allow an alien time to apply for a visa. Congress should go beyond H.R. 2 and numerically limit the number of paroles the Secretary may grant each year to prevent administrative abuse of the benefit.

- **Refuse to pass** any bill that would codify failed Biden Administration policies or make it more difficult for a future President to fully enforce immigration laws.⁵²
- **Defund** President Biden's open border operations, particularly the federal grant money given to non-governmental organizations that facilitate Biden's mass migration, and transfer funds to ICE to enforce immigration laws through detention, deterrence, and deportation.
- **Require** local and state law enforcement to share information and cooperate with ICE in immigration matters or lose federal funding.

For their part, states should:

- **Regularly collect** data on the citizenship and immigration status of suspects stopped, arrested, or detained, using the ICE Law Enforcement Service Center.
- **Publish** data on the number of detained aliens and crimes of which they are accused and convicted. The Texas Department of Public Safety is a model.⁵³
- **Prohibit** sanctuary policies in the state and localities, share information with ICE on detained aliens, and turn over aliens for whom ICE issues a detainer. Withhold state funding and state-administered federal funding from state and local agencies that do not comply with these federal immigration cooperation measures. Georgia has recently enacted a law incorporating these changes.⁵⁴
- **Participate** in 287(g) cooperative programs with ICE.⁵⁵
- **Empower** state residents to sue officials who obstruct federal law enforcement.

Conclusion

Mass release at the U.S. border introduces tangible risks of preventable crimes into communities all across the United States. By enforcing current immigration law, ending the abuse of parole, and either returning asylum applicants to Mexico or detaining them throughout their court proceedings,

the Biden Administration could substantially reduce the risk and ensuing social and economic costs of crime committed by illegal aliens. Meanwhile, Congress should pass H.R. 2 (Secure the Border Act), defund President Biden's open border operations, and transfer funds to ICE to enforce our existing immigration laws.

In addition, states have considerable authority to protect their citizens from preventable crimes. Accordingly, states should end pro-crime, non-prosecution, and sanctuary policies and stop playing recidivist roulette with American lives.

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Endnotes

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