



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 6, 2024

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Majority Leader Schumer and Minority Leader McConnell:

Since Joe Biden assumed the presidency in 2021, he has wielded the levers of federal power to undermine national sovereignty at the United States-Mexico border and facilitate a lawless mass migration episode unprecedented in our country's history. He has single-handedly dismantled policies proven under the Trump Administration to effectively discourage border encounters and prevent waves of illegal immigration. He has incentivized foreign nationals' arrival in the United States through his deliberate non-enforcement of immigration laws and through the abuse of public resources—appropriated by Congress—to fund their settlement across the country.

We should not have to explain to you the dire threat that the border invasion presents to Texas, the undersigned States, and the entire Nation. However, the recent “border bill” proposed in the Senate after negotiations with the Biden White House compels us to offer some suggestions concerning the best course of action regarding federal immigration law.

First, the proposed bill tethers immigration enforcement and border security to foreign aid. This is unacceptable. The security of the American homeland, including the sovereignty of our national borders, must never be a bargaining chip. American citizens must come first. The people of this country are entitled to the enforcement of the country's laws as a baseline expectation, not as a negotiation tactic for the president's allies in the Senate.

Second, the proposed bill sets an arbitrary baseline number of encounters that is virtually equivalent to the crisis-level volume of immigration forced upon the country since Biden took office and allows the President to override the arbitrary numbers whenever he pleases. The widespread backlash against Biden's immigration policies reveals that this catastrophic and unsustainable volume of aliens entering the country has already been vehemently rejected by the public. Elected officials from both major political parties, and from Texas to New York City, are united in their opposition to this level of mass entry. True extremism is to persist with this effort to accommodate foreign nationals against the dire protests of struggling American citizens. The proper amount of illegal immigration is zero, and the President does not need any additional authorities to end the incentives for foreign nationals to appear at the border by the millions. This bill solves nothing. It codifies the same unsustainable level of immigration that has thrown the Nation into chaos. Instead of these arbitrary metrics, Congress should eliminate the incentives and

loopholes enticing aliens to come to the United States and cease funding Biden's policies of nonenforcement with virtually endless taxpayer money.

Moreover, the President already has this power. He does not have to wait for an arbitrary number of encounters before expelling illegal entrants. This bill would simply give him false cover to continue to aid and abet thousands of foreigners each day to commit a broad range of criminal acts—from illegal entry to alien smuggling and human trafficking—by entering between the ports of entry on the grounds that the arbitrary and waivable numbers have not yet been reached.

Third, it is outrageous to tether the funding for ICE to pursue deportations to the other provisions in the bill. If the Senate and the White House were sincere in their efforts to solve the border crisis, they would immediately work together to pass a clean, narrow funding bill solely providing appropriations to ICE to deport those in the country illegally. This would radically change the incentives that affect many illegal immigrants' decision to travel to the United States. The global perception is that new arrivals will not be deported, that they can stay as long as they like, and that American taxpayers will provide transportation, housing, and employment to anyone who shows up and says the magic word "asylum." If the Senate and the White House were interested in solving the border crisis, the final product would have been a bill eliminating asylum loopholes, reining in executive branch "prosecutorial discretion" that has been abused to keep gang members, drug dealers, murderers, and rapists in the country, and eliminating the public entitlements that fund new arrivals during their indeterminate stay in the country.

Fourth, the bill continues to obligate billions of dollars to the "nonprofit" organizations that have a vested interest in drawing millions of new arrivals to the United States and coordinating their resettlement around the nation. In other words, the bill intends to continue to use public funding to worsen the insurmountable costs and consequences Biden already has imposed on American communities after 10 million border encounters in three years.

Finally, one of the most egregious portions of this bill would give the District Court for the District of Columbia the sole jurisdiction to hear legal and constitutional challenges to the provisions of this proposal. In Texas, federal courts have consistently struck down this administration's unlawful actions, with our State characterized by one publication as "a legal graveyard for Biden policies."¹ This measure—sprung on the public and the Senate without warning—is a blatant attempt to sidestep any venue in the country even remotely close to the border. Doing so would drastically stack the deck against any legal challenges brought by the States against the federal government. This provision breaks with precedent. States—red and blue—have always been able to challenge federal policies in federal courts in their own states. Thankfully, Texas and our fellow States have created some major obstacles to Biden's open-borders doctrine because our constitutional system allows us to sue the federal government in fair venues. Even with that accountability, this crisis has persisted. Without that accountability, it is difficult to fathom how much worse the problem could get. Whatever immigration law may be—changed or unchanged—the Biden administration has demonstrated time and time again that they will simply ignore the law and do what they please. Removing the states' ability to contest this unlawful governance in the proper venue would have catastrophic consequences. To even attempt to include this language is a transparent admission that their unlawful policies—and the actions they will take pursuant to these policies—likely would not survive scrutiny in the courts outside of Washington, D.C., and therefore they must insulate the bill from the checks and balances this country was founded upon by blocking state attorneys general from acting as a check on the federal government's actions.

¹ Tierney Sneed, "Why Texas is a legal graveyard for Biden policies," *CNN* (March 3, 2022), <https://www.cnn.com/2022/03/03/politics/texas-biden-court-losses-paxton-bush/index.html>.

This bill prioritizes the interests of foreign nationals, corporate lobbies seeking cheap labor, non-governmental organizations paid to implement the Biden Administration’s policies, and the entire open-borders industrial complex over the interests of our taxpaying American citizens. It codifies countless policy objectives the Biden Administration and the open-borders lobby have sought for years. It empowers the same officials who have acted with total disregard for the people of this country instead of cracking down on their failures to enforce the law. It obfuscates the fact that Biden intentionally dismantled and refused to enforce many effective Trump-era immigration policies to create a crisis now affecting every State in the country. The shocking policies proposed in this bill undermine the rule of law and put Americans last. The destructive consequences of this vision of federal immigration law—which have become all too clear under this administration—are unacceptable. As Congress continues to grapple with immigration policy, we urge our federal lawmakers to make a meaningful change that would cost nothing: authorize the States to enforce existing federal immigration laws. This would put to rest any even potential pre-emption arguments under the Supreme Court’s *Arizona v. United States* decision by legislatively overriding the issue. The Biden Administration has repeatedly—and wrongly—claimed that Texas and the other States have no legal authority to enforce federal immigration law and continues to rely on that SCOTUS decision to attack Texas’s lawful border security actions. End the Biden Administration’s charade and unambiguously empower states to help solve the border crisis.

Proponents of the controversial “border bill” risk misleading the public about what it takes to solve the problems Biden has created at the border. Biden and Mayorkas do not need new powers or new programs. They need to be held accountable for dismantling border security and for refusing to enforce the clear immigration statutes that are already on the books. Make no mistake, we would support—and our country needs—stronger immigration laws, but this border crisis was not created by the immigration laws themselves. It was created by an administration that has refused to enforce the law at the border in any meaningful way. We implore our lawmakers to return to the basics: eliminate incentives for aliens to come to the country, eliminate policies, definitions, and loopholes that allow them to illegitimately enter and stay, and credibly fortify national deportation efforts. It is straightforward and simple to solve these problems and do what is right.

Respectfully,



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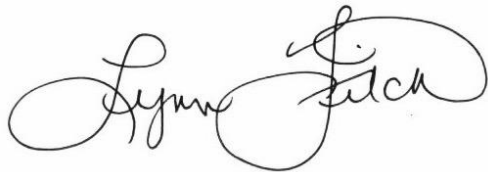
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