

POLICE OUR BORDER ACT

MAY 6, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 8146]

The Committee on the Judiciary, to whom was referred the bill (H.R. 8146) to require a report by the Attorney General on the impact the border crisis is having on law enforcement at the Federal, State, local, and Tribal level, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Police Our Border Act”.

SEC. 2. FINDINGS.

Congress finds as follows:

- (1) Our Federal, State, local, and Tribal law enforcement officers put their lives on the line each day in order to protect our country and serve their communities.
- (2) According to the National Law Enforcement Officer Memorial Fund, 136 law enforcement officers died in the line-of-duty in 2023.
- (3) Congress should do everything in its power to support law enforcement officers at every level and in every part of our nation.
- (4) The southwest border crisis created by the Biden Administration has made every state a border state.
- (5) The Biden border crisis has placed a burden on law enforcement agencies across the nation and has placed a significant strain on the resources that are critical to keeping communities safe.
- (6) Law enforcement officers in every state are put in life-threatening scenarios as a direct result of the open borders.
- (7) Law enforcement has been forced to deal with the influx of fentanyl and many officers are exposed to the drug while on duty.
- (8) It is in the best interest of law enforcement officers and the communities they serve for Congress to pass, and the President to sign into law, strong border security legislation.

SEC. 3. REPORT.

Not later than 180 days after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the impact the Biden border crisis is having on law enforcement officers at the Federal, State, local, and Tribal level, including—

- (1) the estimated dollar amount of all resources devoted to addressing the Biden border crisis, and the extent to which such resources are not available to law enforcement agencies;
- (2) the exposure of law enforcement officers to fentanyl resulting from encounters with illegal aliens at the border and in the United States;
- (3) injuries to law enforcement officers based on a connection to the Biden border crisis or exposure to fentanyl; and
- (4) the morale of law enforcement officers.

Purpose and Summary

H.R. 8146, the Police our Borders Act, introduced by Rep. Anthony D’Esposito (R-NY), would require the Attorney General to report to Congress on how the border crisis affects law enforcement at various levels. The report must detail the financial and operational burdens imposed on law enforcement by the crisis, the exposure of officers to dangers like fentanyl, injuries incurred, and overall impact on law enforcement morale.

Background and Need for the Legislation

The Biden Administration has released more than 4 million illegal aliens into the United States in just three years,¹ and many are

¹ See H. Comm. on the Judiciary, Rep. on The Biden Border Crisis: How the Biden Admin. Opened the Sw. Border and Abandoned Interior Immigr. Enf’t at App’x 1 (Oct. 9, 2023) (“DHS released at least 2,148,738 illegal aliens into the United States” through March 2023) [hereinafter Oct. Interim Staff Rep.]; U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2023*, U.S. DEP’T OF HOMELAND SEC. (reporting that, between April 2023 and September 2023, 688,869 illegal aliens were released by with a notice to appear or paroled); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2024*, U.S. DEP’T OF HOMELAND SEC. (reporting that in FY 2024 thus far, 581,710 illegal aliens were released by with a notice to appear or paroled); Camilo Montoya-Galvez, *Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting*, CBS News (Jan. 22, 2024), <https://www.cbsnews.com/news/immigration-parole-biden-administration-1-2024/>.

permitted to remain in the country even after they have committed a crime.² Instead of deterring illegal immigration and ensuring that illegal aliens are quickly removed from the United States, President Biden and Secretary Mayorkas are making it more difficult for immigration officers to arrest and deport criminals.³

The numbers speak for themselves: well over half a million criminal aliens are on the non-detained docket maintained by Enforcement and Removal Operations (ERO) within U.S. Immigration and Customs Enforcement, meaning that aliens with criminal convictions or pending criminal charges are out on American streets and “free to reoffend.”⁴ Moreover, “in fiscal year 2023, ERO removed 41 percent fewer aliens with criminal convictions and criminal charges than in fiscal year 2020—and nearly 60 percent fewer than in fiscal year 2019.”⁵ The lack of interior immigration enforcement begins with far fewer arrests of criminal aliens.

The surge in encounters at the southwest border is precipitating a complex array of criminal issues in communities across the entire United States.⁶ Local law enforcement is grappling with the repercussions of large-scale human trafficking, human smuggling, and complex narcotics operations predominately operated by dangerous criminal cartels.⁷ As county sheriffs and local police departments face budget cuts amid rising crime, they are now forced to deal with crimes implicating national security.⁸ With the influx of deadly drugs like fentanyl throughout the country, coupled with an increase in human trafficking and gang activity, cartels are now operating in all 50 states.⁹

The Police Our Borders Act would direct the Attorney General to report to Congress on the border crisis’s impact on the nation’s law enforcement. The report would evaluate how funds allocated by law enforcement agencies to manage the border and immigration crisis detract from other important law enforcement responsibilities. Additionally, it would document officer safety concerns, such as fentanyl exposure linked to increased cross-border movement and drug trafficking. Lastly, the report would examine the overall burden of the border crisis on law enforcement capabilities, highlighting the need to secure the border and improve public safety.

million-migrants/ (reporting that at least 596,600 aliens have been paroled into the United States under illegal categorical parole programs); Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. Dep’t of Health and Human Servs. (last accessed Feb. 8, 2024) (reporting at least 274,843 UACs released to sponsors in FY 2022 through FY 2024 thus far). Under the Biden Administration, at least 4,290,760 illegal aliens have been released into the United States, not including at least 175,320 illegal aliens encountered by CBP along the southwest border since April 2023 and transferred to ICE, many of whom have likely been subsequently released.

²*Id.* at 11–17.

³*Id.* at 14–16.

⁴See H. Comm. on the Judiciary, Interim Staff Rep., *New Data Reveal Worsening Magnitude of the Biden Border Crisis and Lack of Interior Immigr. Enf’t*, at 9 (Jan. 18, 2024), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf?_gl=1*um0tzz*_ga*MTEwNTc0NDU4Ni_4xNjc1ODY1NjU0*_ga_1818ZE_QW81*MTcwNzQxNDIxNS4x_My4xLjE3MDc0_MTU2NzQuMC_4wLjA [hereinafter Jan. Interim Staff Rep.].

⁵*Id.*

⁶Paul Goldenberg & Michael Gips, *How the southern border crisis impacts law enforcement nationwide*, POLICE 1 (last visited Apr. 25, 2024) <https://www.police1.com/border-patrol/articles/how-the-southern-border-crisis-impacts-law-enforcement-nationwide-Owd7fqJ3YQO8lxH5/>.

⁷*Id.*

⁸*Id.*

⁹*Id.*

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearings were used to develop H.R. 8146: “The Consequences of Criminal Aliens on U.S. Communities,” a hearing held on July 13, 2023, before the Subcommittee on Immigration, Integrity, and Enhancement of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Donald Rosenberg, Founder, Advocates for Victims of Illegal Alien Crime;
- Bradley Schoenleben, Senior Deputy District Attorney, Orange County, California District Attorney’s Office;
- John Fabbriatore, former Field Office Director, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and
- Ramon Batista, Chief of Police, Santa Monica Police Department.

The hearing examined sanctuary cities that shield illegal aliens at the expense of American taxpayers and the Biden Administration’s lax policies that allow criminal aliens to remain in the U. S. indefinitely. The hearing also examined how drug cartels and gangs exploit radical open-border policies and U.S. immigration law to terrorize communities, harm Americans, and burglarize homes and businesses across the country.

The Subcommittee on Immigration, Integrity, Security, and Enhancement of the Committee on the Judiciary also held a hearing titled “The Impact of Illegal Immigration on Social Services,” on January 11, 2024. The Subcommittee heard testimony from the following witnesses:

- Manuel Mello III, Fire Department Chief, Eagle Pass, Texas;
- Danyela Souza, Vice President, Community Education Council for New York School District 2;
- Steven Camarota, Director of Research, Center for Immigration Studies; and
- Gregory Chen, Senior Director of Government Relations, American Immigration Lawyers Association.

The hearing examined how the Biden border crisis overwhelms American communities’ schools, hospitals, emergency services, law enforcement, and other social services at the expense of American citizens and lawful residents.

Committee Consideration

On May 1, 2024, the Committee met in open session and ordered the bill, H.R. 8146, favorably reported with an amendment in the nature of a substitute, by a recorded vote of 14 ayes to 10 nays, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following recorded votes occurred during consideration of H.R. 8146:

1. Vote on Amendment #1, as amended, to the H.R. 8146 ANS, offered by Mr. Correa—failed 10 ayes to 12 nays.
2. Vote on favorably reporting H.R. 8146, as amended—passed 14 ayes to 10 nays.

COMMITTEE ON THE JUDICIARY
 118th CONGRESS
 24-19
 ROLL CALL

Date: 5/1/24

Vote on: Correa Amndt #1 to HR 8146 ANS

Roll Call #: 1

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. GAETZ (FL)		✓		MS. JACKSON LEE (TX)	✓		
MR. BIGGS (AZ)		✓		MR. COHEN (TN)			
MR. McCLINTOCK (CA)		✓		MR. JOHNSON (GA)			
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)	✓			MR. SWALWELL (CA)			
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)		✓		MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)	✓		
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)				MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WV)		✓					
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 10 Nays: 12 Present: 1
 Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS
24-19
ROLL CALL

Date: 5/1/21

Vote on: Final passage of HR 8146, as amended

Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)			
MR. GAETZ (FL)	✓			MS. JACKSON LEE (TX)		✓	
MR. BIGGS (AZ)	✓			MR. COHEN (TN)		✓	
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)			
MR. TIFFANY (WI)	✓			MR. SCHIFF (CA)			
MR. MASSIE (KY)	✓			MR. SWALWELL (CA)			
MR. ROY (TX)	✓			MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)		✓	
MR. FITZGERALD (WI)	✓			MS. SCANLON (PA)		✓	
MR. BENTZ (OR)	✓			MR. NEGUSE (CO)			
MR. CLINE (VA)	✓			MS. McBATH (GA)			
MR. ARMSTRONG (ND)	✓			MS. DEAN (PA)		✓	
MR. GOODEN (TX)				MS. ESCOBAR (TX)		✓	
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)		✓	
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)	✓			MR. IVEY (MD)		✓	
MR. KILEY (CA)				MS. BALINT (VT)		✓	
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 11 Nays: 10 Present: _____
 Passed: X Failed: _____

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 8146 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 8146 will require the Attorney General to report to Congress on how the border crisis affects law enforcement at various levels.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 8146 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House Rule XXI.

Federal Mandates Statement

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

Section-by-Section Analysis

Sec. 1. Short Title: The “Police Our Borders Act.”

Sec. 2. Findings: This section outlines the factual basis necessitating the report required by section three. It emphasizes the daily risks law enforcement officers face across various jurisdictions, including local, state, federal, and tribal levels. This section also highlights the exacerbated challenges posed by the border crisis, such as increased dangers from illegal activities and drug exposure, particularly fentanyl. It stresses the need to secure the border to support law enforcement effectively and maintain community safety.

Sec. 3. Report: This section requires the Attorney General to report to Congress on the impact of the border crisis on law enforcement. The report will include financial assessments, the effects of encounters with illegal aliens, and other relevant issues like officer morale and injuries to law enforcement. This requirement ensures Congress has the information necessary to address the challenges posed by the border crisis.

Dissenting Views

The “Police Our Border Act” appears to be a reporting bill that simply requires the Attorney General to submit a report to Congress on the impact the number of migrants coming to the border is having on law enforcement officers at the Federal, State, local, and Tribal level. Upon closer inspection, however, this bill seeks to codify Republican attacks on the President’s immigration policies and the fearmongering and demonization of immigrants.

For example, the bill uses highly charged language requiring the Attorney General to submit a report to Congress on the impact the so-called “*Biden border crisis*” is having on law enforcement officers at the Federal, State, local, and Tribal level. Additionally, the report must include information on the “exposure of law enforcement officers to fentanyl as a result of encounters with illegal aliens.” Both of these reporting requirements contain politically motivated rhetoric. Neither is based on fact.

At markup, Representative Lou Correa (D–CA) offered an amendment that would add Customs and Border Protection (CBP) data about fentanyl interdictions to the findings section of the bill. Specifically, the amendment would have updated the findings section of the bill to reflect CBP data that, contrary to Republican claims that undocumented immigrants entering the country between ports of entry are responsible for the majority of fentanyl trafficked into the country, 89 percent of the fentanyl interdicted coming into the United States is brought through legal ports of entry. The amendment was defeated despite bipartisan support.

As an indication of how unserious this legislation is, it includes a finding that “It is in the best interest of law enforcement officers and the communities they serve for Congress to pass, and the President to sign into law, strong border security legislation.” This finding ignores the fact that it was House Republicans, at Donald Trump’s direction, who walked away from border security legislation negotiated by one of the most conservative members of the Senate because they wanted to preserve immigration as a political issue for the upcoming elections rather than work towards a bipartisan solution to our broken immigration system.

In addition, the bill asks the Attorney General to report on the resources devoted to addressing the border and the resources that are “not available to law enforcement agencies.” However, at every turn, it has been Republicans who have voted against giving DHS the resources it needs to do its job. This includes opposing the bipartisan infrastructure deal, which provided additional funding to modernize ports of entry and allow for nonintrusive inspections to combat the smuggling of people and drugs; opposing appropriations bills that would provide robust funding for CBP and border security operations; and refusing to take up President Biden’s supplemental appropriations request to provide vital funds for more immigration judges and asylum officers to speed up processing of asylum claims, as well as funds for additional personnel at ports of entry and technology to stop drugs from coming into the country.

This bill is also very poorly drafted. For example, despite the fact that the entire bill is focused on reporting requirements related to the “*Biden border crisis*,” this term is not defined in the legislation. The failure to define this key term provides little guidance to the Attorney General on the required report, not to mention the fact that the Secretary of Homeland Security would almost certainly be much better situated to assess issues related to border security, but this inattention to detail is further evidence that this bill is more about messaging than congressional oversight of the executive branch.

Although I am generally supportive of genuine attempts to acquire additional information from the Executive Branch as part of Congress’s oversight functions, this legislation is nothing more

than a Republican messaging vehicle that follows similar recent efforts by Republicans to fearmonger and demagogue on the issue of immigration while doing nothing to actually work towards a solution.

For these reasons, I dissent, and I urge all of my colleagues to oppose this legislation.

JERROLD NADLER,
Ranking Member.

