

for Federal Student Aid. Families have had to make tough decisions ahead of enrollment deadlines with incomplete information.

One such parent described the frustration she and her daughter were facing back in April:

She's supposed to decide by the end of this month and pay her housing deposit, but we can't commit to anything until we know what the financials look like.

It certainly makes one wonder: What are all those bureaucrats at the Education Department up to if they can't complete a fundamental part of their job? Unfortunately but unsurprisingly, the answer seems to be spending time and taxpayer dollars on activities that run contrary to the Department's mandate.

The first of these activities, as I have discussed before, is student loan socialism. Of course, the Supreme Court made it clear that this scheme is illegal, and basic common sense tells us it is profoundly unfair both to folks who opted not to pursue a 4-year degree and to those who worked through college and paid their own bills. But President Biden has continued undeterred. Last month, his administration proposed a new rule to allow the Secretary of Education to cancel additional student debt for certain borrowers. It is estimated this will cost taxpayers nearly \$150 billion.

But the Department's illegal nonsense doesn't stop there. Unelected bureaucrats are also trying to rewrite title IX of the Civil Rights Act. The Biden administration apparently wants to take a law that was designed to promote equal opportunities for women in education and make it do the exact opposite. This rule would require States and educational institutions to abandon biological sex as the determinant in program decisions and use so-called gender identity instead, and institutions that refuse to comply would lose access to Federal funding. More than 25 States have already sued to overturn this absurd rule, but the damage to the Department of Education's reputation is already done.

High school seniors and parents have already had to make college choices without crucial financial aid information. Working taxpayers are already footing the bill for the highest earning segments of the Washington Democrats' base. Laws that enacted protections for women are already being used to violate those same protections. It is shaping up to be a banner year for the Biden administration bureaucrats.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Krissa M. Lanham, of Arizona, to be United States District Judge for the District of Arizona.

Mr. MCCONNELL. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

BORDER ACT OF 2024

Mr. THUNE. Mr. President, April border numbers came out last week, bringing us up to more than 1½ million migrant encounters at the southern border so far in fiscal year 2024—1½ million in just 7 months.

Between official U.S. Customs and Border Protection encounters and known "got-aways"—which are individuals the Border Patrol saw but were unable to apprehend—we are closing in on a staggering 10 million migrant encounters at our southern border under President Biden. That is substantially more than the population of New York City. In fact, it is more than the population of all but the largest U.S. States, if you can believe that. And there are still 8 more months in the President's term.

After 3 years of half measures, deflections, and outright ignoring the raging crisis at our Nation's border, the President and Democrats appear to have finally woken up to the fact that their border crisis might be a major political liability for them in the upcoming election.

Fear for their election prospects is doing what 3 years of chaos at the southern border could not, and that is get them focused on illegal immigration—sort of, because the vote on border legislation the Democrat leaders announced for this week isn't really about addressing illegal immigration; it is about giving the American people the impression that Democrats care about illegal immigration.

If the Democrat leader were serious about addressing the crisis at our southern border, he would be bringing up legislation that actually stood a chance of making it out of both Houses of Congress and to the President's desk, but he is not. Instead he is bringing up a vote that he knows will fail in the hope of giving political cover to vulnerable Democrats and with the side benefit, he hopes, of putting Republicans in a difficult spot—political theater at its finest.

If the Democrat leader goes through with this vote this week, he should expect some difficult conversations. Perhaps he would like to explain why, if Democrats are so concerned about illegal immigration and securing the border, they have repeatedly banded together this year to oppose—to oppose—

commonsense amendments that came to the floor.

You would think that if Democrats were really worried about addressing the illegal immigration crisis, they might have supported Senator BLACKBURN's motion to allow State and local law enforcement to detain criminal illegal aliens for ICE to deport them. Or Senator LANKFORD's amendment to prohibit funding from being used to release special-interest aliens—those are individuals who may pose a threat to the United States—during legal proceedings. Or Senator HAGERTY's amendments to prevent taxpayer dollars from being used to fly illegal immigrants into the United States or to have them count in the census. The list goes on.

It is hard to understand why anyone would oppose such commonsense measures, and yet all Democrats did. So it is just a little hard to swallow their newfound enthusiasm for border security.

Needless to say, it is not just Democrats in Congress scrambling for political cover. The President is also desperately trying to make himself appear serious on the border. Two weeks ago, the Department of Homeland Security proposed a rule to expedite the deportation of criminals and terrorists. But if the President thought this would make him look serious on border security, he was wrong because the President's new order is a reversal of his own policy, which was established earlier in his administration. That is right. The only reason the President had to finally allow for the immediate deportation of criminals and terrorists is because his administration had created a situation that allowed these individuals to stay in the country in the first place.

Look, I am glad President Biden is making a small attempt to clear up part of the mess he has made, but I am afraid the "Vote for me; I am cleaning up the historic disaster I have created" may not be the most convincing election slogan.

Let's be very clear. We are here today with 3 successive years of record-breaking illegal immigration at our southern border because of President Biden. On the day he took office, the President began dismantling the border security policies of his predecessor that, I might add, had been working. Illegal immigration began surging in response, and it has never stopped.

So while I appreciate that my Democratic colleagues would like to make it seem like this is a congressional matter in order to take the President off the hook and put Republicans on it, the truth is, we don't need congressional action to fix the crisis at our southern border. President Biden created this border crisis, and he can end it today using the very same authority he used to dismantle so many border security policies when he became President.

We have 5 more months until election day, and I suspect this won't be

the last attempt by Democrats to try to convince people that they want to address illegal immigration. But after 3-plus years of a Democrat-created border crisis, will the American people really believe—really believe—that the arsonists who started the fire are really serious about putting it out?

I yield the floor.

The PRESIDING OFFICER (Mr. PADILLA). The Senator from Wisconsin. Mr. JOHNSON. Mr. President, I come to the floor today to speak to the same topic that my distinguished colleague from South Dakota was talking about. He called what was going to happen over the next couple of days here political theater. That is pretty accurate. A political stunt. Political cover. A charade. Instead of actually securing the border, that is what Democrats in Congress, that is what President Biden—that is all they are interested in, because, as my colleague mentioned, President Biden has all the authority he needs to secure the border.

But I want to spend a little bit of time here talking about the bipartisan bill that has been reintroduced that we will be voting on again on Thursday, although it failed very quickly because it literally was worse than doing nothing.

But I think the first point to be made is—so the American public understands—when President Biden and Democrats in Congress talk about securing the border, they are not talking about securing the border the way most Americans think about it, like actually securing the border. What they are talking about is: How do we make it more efficient to encounter, process, and disperse illegal immigrants who are coming to this country with invalid asylum claims? How can we encounter them, process them, and disperse them as efficiently as possible? That is what they are talking about. So don't be fooled when they talk about securing the border.

Proof positive of that is, one of the lead Democrat negotiators in this bipartisan bill—let me give the exact quote. He said the bill requires the President to funnel asylum claims to the land ports of entry when more than 5,000 people cross a day. That is not called securing the border; that is just sending the flow someplace else. Then the Senator went on and said: The border never closes.

So, again, when Democrats talk about securing the border, they are talking about more efficiently encountering, processing, and dispersing people; they are not talking about securing the border.

I want to start—to prove my point that they were never serious in these negotiations other than looking for political cover—with this quote that the majority leader gave to POLITICO a day or two after that border bill failed. The majority leader said:

We were playing chess, they were playing checkers, and we ended up with a Ukraine bill.

He also went on to say:

We also end up in much better shape on the border than we were three months ago.

I will come back to this, but let me hit the points now. If you were really negotiating in good faith, if those negotiations failed, would you literally rub your negotiating partner's nose in the failure by claiming: We were playing chess, those knuckleheads were playing checkers, and we got exactly what we wanted? I would argue that is not the sign of a good-faith negotiation.

Then, if you were really interested in securing the border, you would never make that statement: "We . . . end[ed] up in . . . better shape on the border than we were three months ago." Better shape on the border would have been actually passed enhanced authority for the President to actually secure the border.

The majority leader thinks he is in better shape on the border because he got the political cover he sought, which was his only goal in those negotiations.

Let me spend just a little bit of time describing why that bill was far worse—and I mean far worse—than doing nothing.

This is the border chart I have been producing since I became chairman of Homeland Security in 2015. This shows monthly totals of encounters on the southwest border.

You can see, back here in 2014—I have recreated that right here—that President Obama, when he hit 2,000 people a day, declared that a humanitarian crisis. And President Obama was correct; it was a humanitarian crisis.

Now, the solution back then was we started detaining people. We started clamping down. We built a new detention facility. President Obama actually had success in reducing the flow until a court reinterpreted the Flores settlement agreement and said that that applied to not only unaccompanied children, forcing their release in 20 days; it also applied to children accompanied by their parents.

That was the one court decision that did weaken a Presidential authority. But the fact of the matter is, even with that weakened Presidential authority, because of DACA, which sparked all this, when President Trump faced his border crisis—almost 5,000 people a day in 1 month—he used the Presidential authority that the Supreme Court, in its 2018 decision talking about the Immigration and Nationality Act, said that current law exudes deference to the President in every clause. It entrusts to the President decisions whether and when to suspend entry, whose entry to suspend, for how long, and on what conditions. It thus vests the President with ample power to impose entry restrictions in addition to those elsewhere enumerated in the Immigration and Nationality Act.

So obviously President Trump was able to use existing authority. He closed the border in 12 months—12

months—not through any help by Congress passing a law; by using that authority where the Supreme Court said the law exudes deference to the Executive.

Well, when President Biden came into office, he blew the border wide open. How? He did it by using that exact same Executive authority that exuded deference to the President. He used that deference, he used that authority, and he blew open the border, and we see the catastrophe that has resulted.

Now, the problem with this bill is it codifies most of President Biden's open border policy. It sets thresholds at 5,000, at 4,000, and I will talk about those in greater detail. But thresholds to do what? Supposedly to secure the border. No, it doesn't really secure the border. Again, it sends those individuals to the ports of entry to have their asylum claims adjudicated in a Rube Goldberg-type situation. It spends almost \$20 billion, this bill—\$20 billion—primarily, again, to accomplish the Democrats' definition of securing the border, which is to more efficiently encounter, process, and disperse illegal migrants who do not have valid asylum claims. That is what this bill does. It builds more detention facilities. It hires a small number of Border Patrol agents—425—but it hires over 4,000 asylum officers to, again, adjudicate these claims.

And they use a new standard now. It goes from a significant possibility that these claims are valid to a reasonable. I am sorry; I don't see much distinction there. So, again, these asylum officers are going to be given all kinds of discretion. These adjudications are now going to be done by asylum officers, not by immigration judges.

So I see nothing in this bill that in any way, shape, or form forces a higher standard. It is all subjective. And under this administration, the subjectiveness of that I can pretty well guarantee you will continue the catastrophe.

It pays for more detention beds. It pays for alternates to detention, which has never worked effectively. But, again, \$20 billion of money we don't have.

Now, when President Trump secured the border, he didn't have additional funding for that. He didn't have additional Customs and Border Protection agents. He used his policies. He used his Executive authority—"Remain in Mexico." You can't come to this country and claim asylum; you have to do it from your home country or stay in Mexico to do it. That was a huge deterrent, and the flow stopped with safe third country agreements. There were other things. Again, using that Executive authority, he secured the border. We didn't need an immigration bill—certainly not this Rube Goldberg bill that spends \$20 billion that we don't have.

Rather than spending all that money to encourage more illegal immigrants

to come to this country, we ought to stop the flow, and then we wouldn't have to spend the money. Doesn't that make a whole lot more sense? Do what President Trump did: Actually stop the flow. But, again, that is not what this bill does.

I think the worst aspect of this bill—and this is why I always talk about it is worse than doing nothing—is not the 5,000 average migrants a day, which was—I mean, that is what this would look like if we just normalized 5,000 or 4,000. You are just codifying the open border. The 5,000 threshold makes it mandatory that the President supposedly secure the border. Again, it doesn't really define that. I would argue that doesn't even secure the border. But it is the 4,000 discretionary threshold—that, when average migration, I think, over 7 days reaches 4,000 a day—a massive number—now the President, it says, has discretion to stop processing asylum claims and supposedly secure the border.

Well, why is that problematic? Well, again, the Supreme Court said the current law exudes deference. President Trump had the authority. By Congress passing a law basically implying the President doesn't have the authority to stop processing asylum claims, you are weakening that authority. And even worse, that discretionary authority ends after 3 years. So that bipartisan bill would actually dramatically weaken the authority of a President who is actually serious about securing the border.

That is why that bill had to be defeated and must be defeated now. It is not a serious attempt. It is a bill that was negotiated in bad faith, with the Democrats supposedly playing chess and, unfortunately, our side playing checkers.

Again, it doesn't have to be this complex. Use current authority. Take a look at what Trump did. Do that. Don't spend additional money. Stop the flow. That ought to be our goal.

So, again, most Republicans in the Senate conference, we weren't looking for an immigration bill. We certainly weren't looking for one that weakened the President's authority. We would have been happy to strengthen the President's authority. We would have been happy to clarify—by the way, Obama's Secretary of Homeland Security, Jeh Johnson, completely disagreed with the court decision on the Flores settlement. We would be happy to clarify that, no, Flores only applies to unaccompanied children. We have that deterrence. We could follow the law to detain people who came to this country illegally. We would be happy to strengthen authority.

What we were looking for in a border bill was to have an enforcement mechanism that would force President Biden to use the authority he has to actually secure the border based on our definition of securing the border, the way most Americans view securing the border. Stop the flow of illegal migrants

that has caused a clear and present danger to this Nation. I could go through the list of horrors—the drug traffickers, the human traffickers, the sex traffickers, the members of some of the most brutal gangs in Mexico, South and Central America, the military-age men coming into this country. We are going to be dealing with this catastrophe for decades—for decades; the rapes, the murders that are being committed by people in this country who shouldn't be here that have been facilitated by this open border policy.

Again, Republicans would be happy to strengthen the President's authority to actually secure the border. What we are not happy to do is engage in this charade.

Let me end on this note again: Is this the quote of someone who has entered into good faith negotiations to develop a bill to actually secure the border? This is the majority leader of the Senate, the one who is going to engage in political theater again this week, bringing up the exact same bill that has already failed. It failed in the eyes of the public within 24 hours after the introduction, it was so bad. It was worse than doing nothing. But the majority leader seemed to be pretty happy with that failed bill:

We were playing chess, they were playing checkers, and we ended up with a Ukraine bill.

That is what they wanted. Their primary focus, their priority, was providing \$60 billion to a bloody stalemate, which, by the way, a couple of days after that thing passed, the administration was already indicating, well, that is probably not going to be enough. Even though the majority leader came out of the White House and said: This is simple. Ukraine gets \$60 billion, they win. If they don't get \$60 billion, they lose.

This is a disingenuous quote of a bad-faith negotiating partner. But it is also the quote—if you look at the last sentence there—of somebody who is not looking to secure the border but was looking for political cover. That is all he wanted. That is all the Democrats wanted. That is all President Biden wants: political cover.

We also end up in much better shape on the border than we were 3 months ago.

Again, the bill didn't pass. I am glad it didn't. It would have been worse than doing nothing. But they didn't get a bill to supposedly secure the border. And he is happy about it? He has a big old Cheshire Cat grin on his face: We were playing chess, they were playing checkers, we got exactly what we wanted. And \$60 billion to secure another country's border, and we can keep our border wide open. We can allow this flood of illegal migrants coming to this country. We don't care. We want an open border. We know it causes problems. All we want is political cover, and we got it.

We are in a lot better shape passing nothing; not strengthening the President's authority to close the border;

not having enforcement mechanisms to force President Biden, who wants an open border, to use the authority to secure the border. No. They got a bill that they are going to bring up again. It will fail. They are going to play political theater. They are going to use political cover. And they are just happy as a lark. They think they have political cover.

I am hoping that the American public is paying attention to this charade, to this political theater, and recognizes that President Biden and his colleagues in the Democratic Congress want an open border. They caused this problem, and they will do nothing to secure it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. CASSIDY. I ask unanimous consent the Senate start the scheduled vote early.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 599, Krissa M. Lanham, of Arizona, to be United States District Judge for the District of Arizona.

Charles E. Schumer, Richard J. Durbin, Alex Padilla, Amy Klobuchar, Jack Reed, Tina Smith, Tammy Duckworth, Richard Blumenthal, Robert P. Casey, Jr., Catherine Cortez Masto, Margaret Wood Hassan, Peter Welch, Sheldon Whitehouse, Raphael G. Warnock, Laphonza R. Butler, Brian Schatz, Benjamin L. Cardin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Krissa M. Lanham, of Arizona, to be United States District Judge for the District of Arizona, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Hampshire (Ms. HASSAN), the Senator from New Jersey (Mr. MENENDEZ), the Senator from New Hampshire (Mrs. SHAHEEN), and the Senator from Montana (Mr. TESTER) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Tennessee (Mr. HAGERTY), the Senator from Missouri (Mr. HAWLEY), and the Senator from Missouri (Mr. SCHMITT).

The yeas and nays resulted—yeas 66, nays 27, as follows: